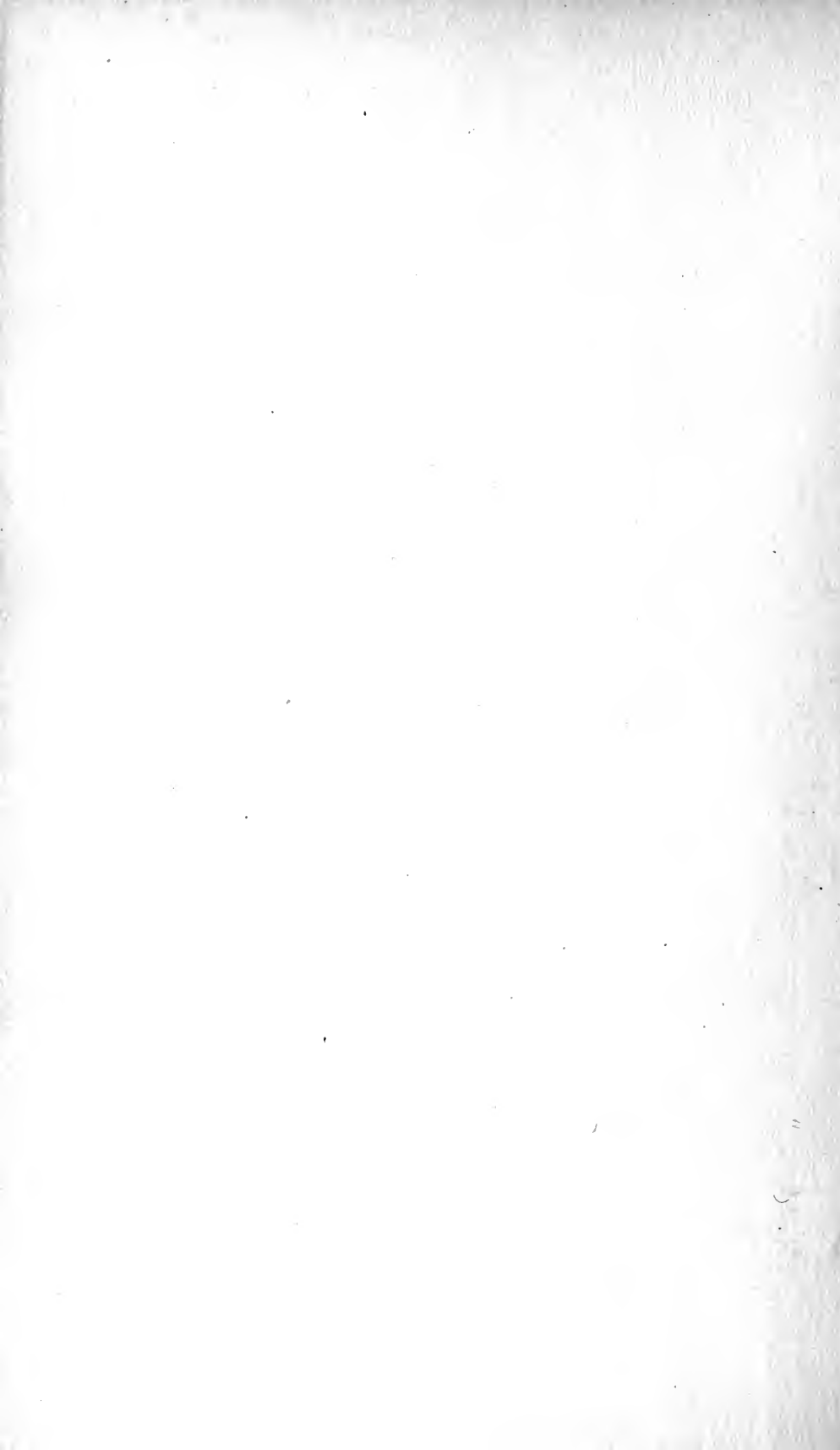




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THE LAW AND PRACTICE
OF
CIVIL PROCEEDINGS
BY AND AGAINST
THE CROWN
AND
DEPARTMENTS OF THE GOVERNMENT.

WITH NUMEROUS FORMS AND PRECEDENTS.

BY
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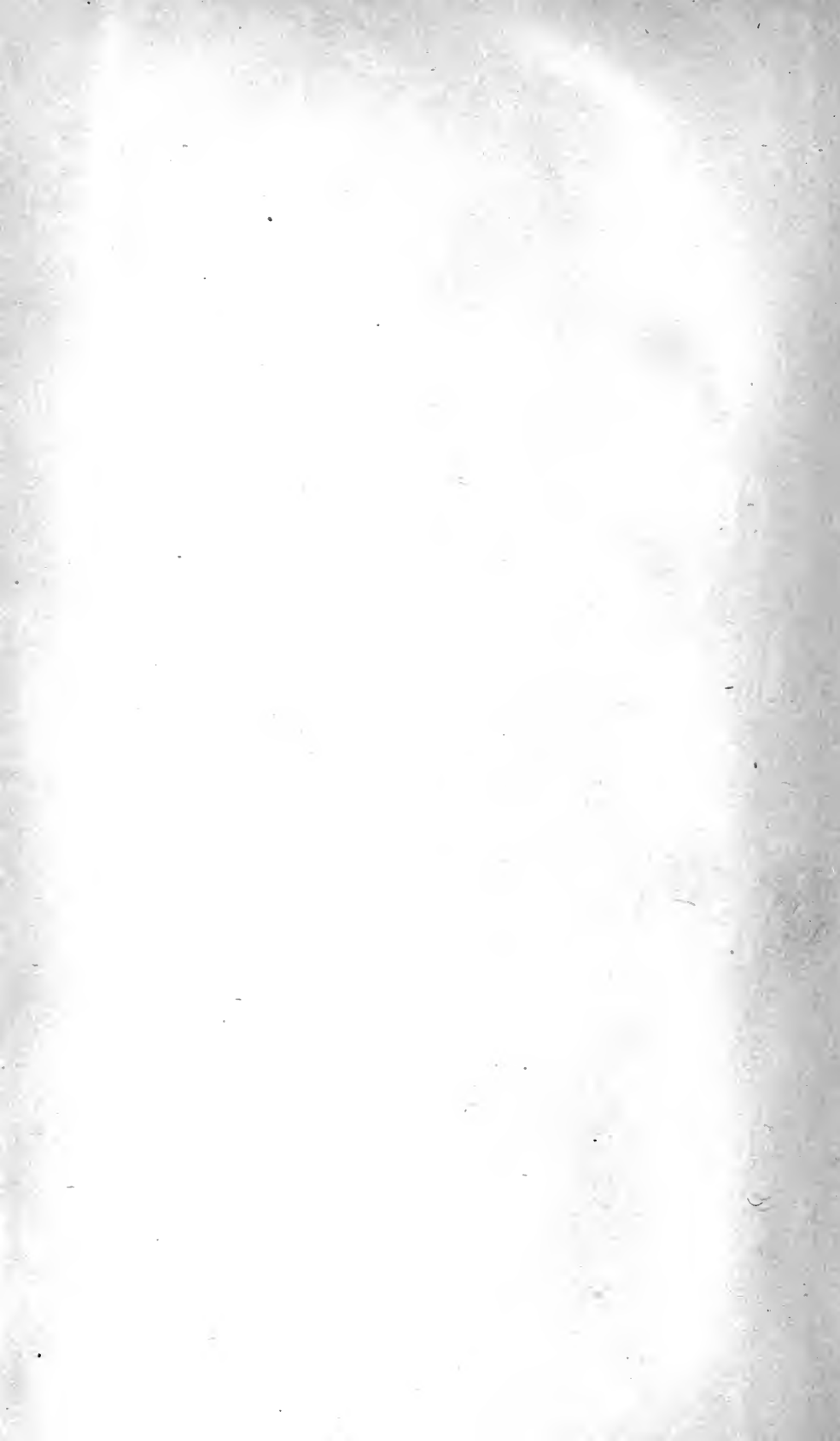
The Right Honourable

RICHARD EVERARD, BARON ALVERSTONE,

G.C.M.G., &c. &c. &c.,

Lord Chief Justice of England,

WITH MUCH RESPECT AND ADMIRATION.



PREFACE.

THIS book is the first attempt which has been made in modern times to deal comprehensively and practically with civil proceedings by and against the Crown and Government Departments, and I submit it, as such, to the indulgence of both branches of the profession. There are many things that are vestigial and some that are rudimentary in prerogative practice, but the change that has taken place in the last century, even in this backwater of the law, may be seen by comparing the contents of this work with Chitty's treatment of a similar subject in his book on the Prerogative of the Crown, published in 1820. He devotes in all two chapters to proceedings by and against the Crown, containing together one hundred and thirty-one pages, and of these no less than sixty-eight are devoted to extents. In his day, the chief business of the King's Remembrancer's Office was the issuing of extents; now extents in chief are of minor importance, and extents in aid are practically obsolete. The practice on the Revenue side of the King's Bench Division is now governed by statutes and rules which did not exist in Chitty's time. Petition of

right has now been made a practicable mode of redress for the subject. In fact the only proceedings dealt with by Chitty which still retain their full medieval flavour are those on extents and inquisitions. The growth and multiplication of Government Departments, again, has given rise to a mass of new law and practice which occupies Book I. and other portions of this work. But though prerogative practice has progressed, it still remains, for many purposes, in the condition in which the general practice of the Courts was before the Judicature Acts and Rules, and this fact presents a difficulty to an author who was not nurtured on the Common Law Procedure Acts. But I have endeavoured, with the aid of a fairly long experience of Crown practice, to surmount the difficulty to the best of my ability.

Chitty was indebted, in his dissertation on extents, to a well-written book on that subject by West, published in 1817. In 1826 appeared the second edition of Serjeant Manning's elaborate work on proceedings at law on the Revenue side of the Exchequer, and, in 1827, the second edition of Fowler's Exchequer Practice dealt very cursorily with the practice on English informations. Much later, in 1887, Mr. Clode produced his book on petition of right, and a useful sketch of the Revenue practice by Mr. J. Johnston, of the King's Remembrancer's Department, appeared in the Annual Practice for 1908. Some other subjects which are discussed by me have been treated incidentally in books written for a different purpose, but I have not been able to make any extensive use either of these or of the books which I have specifically mentioned, and have been forced to rely in the

main on my own researches and experience. I have endeavoured to deal with all these matters as they exist at the present day and so far as modern conditions require them to be dealt with, and have added, from the large number of forms and precedents in my possession, those which seem most likely to be useful. After discussing in detail the law and practice of the several forms of civil proceedings to which the Crown and Government Departments are substantial, and not merely formal, parties, I have endeavoured, in Book VI., to collect together and classify the general points of practice in respect of which the Crown is entitled to prerogative rights, and this forms, I hope, not the least useful portion of the book. Finally, I trust that I shall be forgiven for having expressed my own opinion with freedom in the not infrequent cases where the authorities are conflicting or there is no authority at all.

My obligations are many and various—to the Lord Chief Justice of England for kindly interest in the work and for permission to dedicate it to himself; to Mr. Justice JOYCE and Mr. Justice SUTTON, association with whom, when they occupied the position of Junior Counsel to the Treasury, taught me, or gave me the opportunity of learning, whatever I know about the often obscure matters with which this book deals, to the former also for a useful suggestion, and to the latter for many valuable notes and precedents; to the Treasury Solicitor (the EARL OF DESART, K.C.B.), for full permission to use the materials under his control; to the King's Remembrancer (Master J. R. MELLOR) and Messrs. HANCE and JOHNSTON of his Department for

courteous readiness to assist; to Mr. A. H. DENNIS, Assistant Solicitor to the Treasury, for the use of valuable notes; to Mr. A. T. HARE, Principal of the Treasury Solicitor's Department (Law Courts Branch), and to Messrs. J. RYE and R. M. GREENWOOD, and the Staff of the Department, for unwearied kindness in procuring documents and answering inquiries; to Mr. J. E. L. PICKERING, Librarian of the Inner Temple, and his Staff; and to Messrs. R. B. D. ACLAND, K.C., F. F. DALDY, C. H. E. FLETCHER, and EVELYN SHAW.

G. S. R.

TEMPLE,

March 3rd, 1908.

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But it is enacted by the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 17 (6), that save as provided by the Act an order or proceeding of the Commissioners shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, certiorari, or otherwise, either at the instance of the Crown or otherwise.

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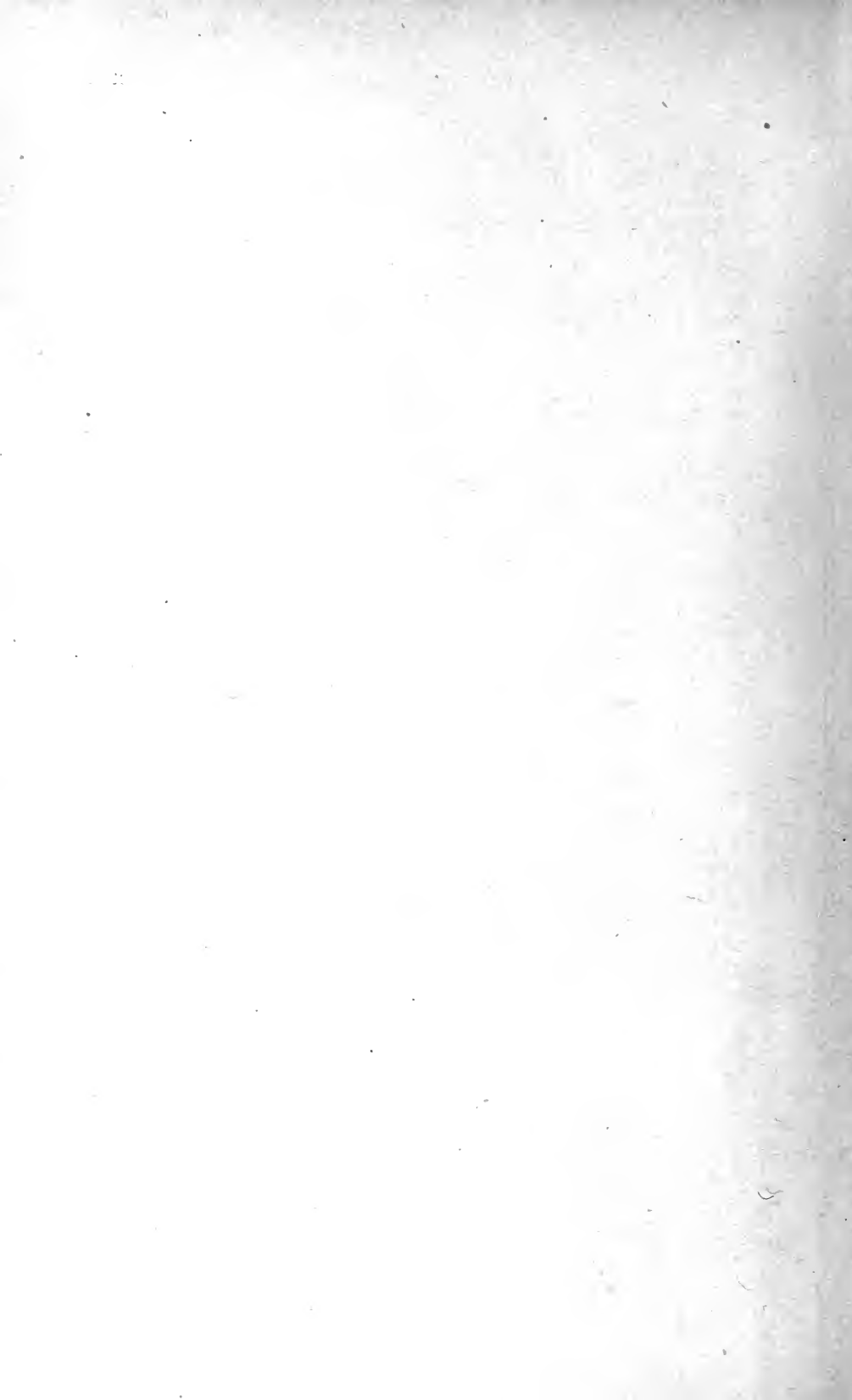


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THE CROWN (CIVIL PROCEEDINGS).

BOOK I.

Civil Proceedings by and against the Crown, Members
of the Royal Family, and Government Departments.

CHAPTER I.

SUITS BY AND AGAINST THE CROWN, MEMBERS OF THE ROYAL
FAMILY, AND GOVERNMENT DEPARTMENTS.

The Crown.

THE King participates in legal proceedings either in his own person or by his proper officers appearing on his behalf, namely, by his Attorney-General or Solicitor-General (in Scotland by the Lord Advocate or the Solicitor-General), his Procurator-General or the Treasury Solicitor. It will be the object of Books II. to VI. of this work to deal with such participation in detail. In the Courts of the Duchy of Lancaster he is represented in respect of his Duchy by his Attorney-General of the Duchy of Lancaster (see below, p. 16); he is also represented by the Solicitor of the Duchy of Lancaster (see below, p. 20). Where the Duchy of Cornwall is in the hands of the Crown, and there is no Duke of Cornwall in being, it is said that the King's Attorney-General conducts all proceedings relating to the Duchy, and that where there is a Duke of Cornwall, but he has not yet obtained livery of the Duchy, the proceedings are carried on by the King's Attorney-General, taking along with him the Attorney-General of the Duchy of Cornwall. (*A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167, at p. 255.) When the Duke of Cornwall dies *pendente lite* it is said that the proceedings are carried on by the King's Attorney-General without any necessity for proceeding *de novo*. (*Id.* at p. 256.)

No action lies against the Crown at the suit of a subject. Whatever the origin of this fact, there is no doubt that it forms part of the existing law. It has been supposed to be due to the idea that "the King by his writ cannot command himself." (*Sadlers' Company's Case* (1588), 4 Rep. 54 b, 55 a; see Com. Dig. Action, C. 1; Praerogative, D. 78.) There seems to be no logical reason why the King should not command himself if he chose (compare the form of action "State *v.* State" in some American States, and see *R. v. Gregory* (1672), 2 Lev. 82; 3 Keb. 127, 164); but it is certain that by existing English law he does not do so, save in certain cases, to be dealt with hereafter, where the proper officer of the Crown is made a defendant in the same manner as a subject. It is said also (Chitty, Prerog. 245) that "the King may maintain the usual common law actions, as trespass *quare clausum fregit* or for taking his goods. The only exception seems to be in the case of actions which suppose an eviction or disseisin, as an assize, or, it seems, an action of ejectment. The King cannot maintain such actions, they being inconsistent with his royal dignity, and contradictory to the fiction of law that the King cannot be dispossessed of property once vested in him." This venerable and convenient fiction is dealt with below in connection with informations, at p. 176. But, at any rate in recent times, common law actions by the King, waiving his prerogative remedies and adopting the remedies assigned to his subjects, are unknown, and it is not proposed to discuss them as though they were still existent.

But there are a considerable number of cases in which, either by statute or otherwise, departments of the Crown or Government can sue and be sued as such, and these cases it is proposed to discuss in detail. It is obviously the modern tendency to encourage such proceedings by legislation, with the view of avoiding the singularities which attend the high prerogative processes by petition of right or information. (See the remarks of Phillimore, J., in *Graham v. His Majesty's Commrs. of Public Works and Buildings*, [1901] 2 K. B. 781; 70 L. J. K. B. 860.) The right of the Crown, however, to proceed by prerogative process is often specifically preserved, and still exists, unless specifically forbidden; and it is not seldom exercised, in spite of a special provision for suits by or against a particular Government department. For instance, in *A.-G. v. Cohen, Sons & Co.* (1891), not reported, the Crown proceeded by information in a matter which might have been the subject of an action by the Secretary of State for War. (See below, p. 31.) In the absence of such a special provision, the Department must proceed or be proceeded against in the name of, and as if it were, the Crown. It

should be observed, moreover, that where proceedings are taken against a Department, the judgment, in the absence of special provisions, can be declaratory only. No execution can follow upon it, because there are no moneys out of which damages can be paid except moneys provided by Parliament for the purpose. But Departments of the Government are the constitutional organs of the Government and its efficient agents, and their acts bind the Crown. (*A.-G. v. Lindegren* (1819), 6 Price, 287.)

1 Ann. c. 2 (st. 1, c. 8, Ruff.), s. 4, provides that no writ, process, or proceeding for any debt or account due or to be made to the Crown for or concerning any lands, tenements, or other revenue, that shall be depending at the demise of the Crown, shall be discontinued by reason of such demise, but shall continue and remain in full force and virtue. (See also below, pp. 212, 463.)

With regard to the private estates of the Crown (defined in the Crown Private Estates Act, 1862 (25 & 26 Vict. c. 37), s. 1, and sect. 1 of the Crown Private Estates Act, 1873 (36 & 37 Vict. c. 61)), sect. 11 of the former Act, as extended by sect. 3 of the latter, provides that, in respect to private estates of the Crown not vested in trustees, wherever situate, suits and actions may be sued on behalf of the Crown by and in the name or names of any person or persons to be from time to time for that purpose appointed by the King by any writing under the Sign Manual, and all suits and actions respecting such private estates at the instance of other parties may be sued and carried on by process directed against such person or persons.

Sect. 3 of the Act of 1873 further provides that any proceeding in any part of the dominions relating to any debt or liability to, or any claim or demand by, the King in right or respect of his privy purse, or of any personal estate or effects subject to disposition by his will, may be prosecuted on behalf of the Crown by or in the names of any person or persons appointed as aforesaid. By sect. 4, all other rights of the Crown in this behalf are saved.

The effect of sect. 10 of the Act of 1862 is to apply the general provisions as to trustees to trustees of the Crown's private estates in any part of the dominions except Scotland, and to provide that any proceeding on behalf of the Crown thereunder may be taken by persons appointed as above.

It should be added that the Crown is in exactly the same position, for the present purpose, with regard to its rights in respect of the Duchy of Lancaster, as it is with regard to its other rights. So it was resolved in the *Case of the Duchy of Lancaster* (1562), Plowd. 212, at pp. 216, 217: "There is no clause in the Charter [separating the Duchy from the Crown], which makes the person of the King

that has the Duchy to be in any other degree than it was before; but for things which concern his person he shall be in the same estate as he was before The Charter extends only to the estate, condition and order of the lands of the Duchy, but does not reach to the person of the King who has the lands, in points touching his person, nor does it diminish or alter the pre-eminences which the law gives or attributes to the person of the King, but the same continue as well with regard to the possessions of the Duchy of Lancaster, as the lands which come to him from other ancestors." (See also *Alcock v. Cooke* (1829), 5 Bing. 340; 7 L. J. (O. S.) C. P. 126.)

But while the King is not subject to nor enjoys the disabilities or advantages of minority in respect of the possessions which he has, or the acts which he does, as King, it is otherwise in respect of his position as Duke of Lancaster. (Bro. Abr. Prerog. pl. 132; *Case of the Duchy of Lancaster* (1562), Plowd. 212, at pp. 213, 214.)

See further the articles on the Attorney-General of the Duchy of Lancaster (p. 16) and the Solicitor of the Duchy of Lancaster (p. 20).

For the procedure for the enfranchisement of manors vested in His Majesty in right of the Crown, or of the Duchy of Lancaster, see the Copyhold Act, 1894 (57 & 58 Vict. c. 46), ss. 68—71.

In Scotland there is a comprehensive Act regulating the institution of suits at the instance of or against the Crown and Public Departments, namely, the Crown Suits (Scotland) Act, 1857 (20 & 21 Vict. c. 44). By sect. 1, "Every action, suit or proceeding to be instituted in Scotland on behalf of or against Her Majesty, her heirs and successors, or in the interest of the Crown, or on behalf of or against any Public Department, may be lawfully raised in the name and at the instance of, or directed against, Her Majesty's Advocate for the time being as acting under this Act." Sect. 2: "Provided always, that before instituting or defending any such action, suit or proceeding, Her Majesty's Advocate shall have the authority of Her Majesty, or of the Public Department respectively on whose behalf or against whom such action, suit, or proceeding shall be instituted, to the institution or defence thereof." By sect. 3, no private party in any such action, suit or proceeding may take the objection that such authority has not been given, or that evidence thereof is not produced. By sect. 4, "Public Department" includes the Treasury, the War Department, the Post Office, the Inland Revenue, the Customs, the Woods and Forests, the Works and Public Buildings, the Board of Trade, and all the like Public Departments, bodies and boards, and all the officers and persons acting on their behalf, or

entitled at the date of the Act to sue in their behalf. By sect. 5, such proceedings are not to abate or be affected by any change in the person holding the office of Her Majesty's Advocate.

For the procedure before the passing of the statute, see *L. A. v. Lord Dunglas* (1842), 9 Cl. & F. 173, and the judgment of Lord Medwyn in that case in the Court below (15 S. 314), a case which further decides that the Lord Advocate bringing an appeal to the House of Lords in such a case is not required to enter into recognisances to answer the costs of the appeal.

The Crown Private Estates Act, 1862 (25 & 26 Vict. c. 37), s. 11, further provides that all suits and actions respecting the private estates of the Crown in Scotland, which are not vested in a trustee or trustees, may be sued in Scotland on behalf of the Crown by any person or persons to be from time to time appointed by the King by writing under the sign manual, and all suits and actions respecting such private estates, at the instance of any other parties, may be sued and carried on by process against such person or persons. A person or persons so appointed by the King may make applications for declarations that the Crown is entitled to a conveyance to itself of Crown private estates vested in trustees and for the appointment of new trustees thereof.

Members of the Royal Family.

The Queen Consort.

It appears that the Queen Consort might have sued or been sued as a *feme sole* at common law, as in a case in 1410, Y. B. P. 11 Hen. IV. pl. 26, which was a *scire facias* to repeal certain letters patent granted by the King to the Queen Consort, and in which it was said: "*Præcipe quod reddat gise vers le Roygne et auters maners des breves, car el est person exempt, nient obstant le couverture.*" See also the remarks of Brian, J., in Y. B. M. 3 Hen. VII. pl. 22. We find her suing in a *quare impedit* against the Abbess of Cirencester in Y. B. H. 18 Edw. III. pl. 6. The reason given in Co. Lit. 133 a, is that "the wisdom of the common law would not have the King disquieted for such private and petty causes" as the legal proceedings of his wife.

The statute 32 Hen. VIII. c. 51 (numbered c. 12, private, in Ruffhead's edition), however, makes special provision on the matter. After enacting that the King may settle lands in jointure on the Queen for the time being, and that such Queen may accept the same and dispose of the profits thereof as a *feme sole* (see also the Crown Private Estate Act, 1800 (39 & 40 Geo. III. c. 88), ss. 8, 9), the statute provides that the Queen "shalbe hable and enabled by auctoritie of this Acte to sue and pursue in her owne christen name and by the

addition of Quene of England and of Fraunce and Lady of Ireland, without the consent of the Kinges Highnes, and without nomination of the Kinges Highnes as her husband or Souveraine Lorde," in any legal processes or matters which may be sued or prosecuted by her, "and she to have theeffect and profit of the same to her owne propre use and behouf without contradiction or disturbaunce of the Kinges Highnes; and also to sue in her owne name onely as a woman soole all maner of actions sutes and executions as the cace shall requier . . . and also shall be hable and enhabled to pleade and be impled in anny of the Kingis Courtis and in all other Courtis and places, in all maner of sutes and actions aswell reall and personall and myxte, in her owne christen name and with the said addition of Quene of England and of Fraunce and Lady of Ireland onely."

It would appear that, as this statute has never been directly amended, the subsequent alterations in the style of the Sovereign leave it untouched, and that the Queen Consort should, in strictness, still sue and be sued by the title mentioned in the statute. According to Chitty on Pleading, however (ed. 1831, vol. ii. p. 25), she should sue and be sued as "Her most sacred Majesty Queen, &c. [*using the now current title*], consort of our sovereign lord the now King."

It seems that she can sue by her Attorney-General or Solicitor-General by information, or sue and be sued in her own person by ordinary action. "Suit by petition can be to no other but only to the King, for no such suit shalbe made to the Queene or to the Lord Prince, for these personages have no such prerogative" (Staundf. Praerog. 75 b). We find her Attorney-General proceeding by information of intrusion in 1607 (see *A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167, 202), and it was said in *Sir Robert Floyde's Case* (1619), 2 Roll. Abr. 213: "La Royne Feme del Roy poet informer per sa Atturney General en le Chancery per English Bill d'aver un decree fait en le Court del Royne confirme, car coment que el soit un subject, uncore el ad tiel prerogative del Roy come que el est son feme."

Her Attorney-General and Solicitor-General are entitled to a place within the Bar, together with the King's Counsel. (Selden, Tit. Hon. I. 6, 7; 1 Bla. Comm. 220.)

Some of the early authorities seem to place the Queen Consort, as a litigant, almost in the position of the King. Thus, in Y. B. 17 & 18 Edw. III. pp. 430—435 (Rolls Series), it is said that her writ will not abate for the same reasons as those for which a common person's writ would abate; and in Y. B. 18 Edw. III. pp. 29—31 (Rolls Series), that her writ will not abate for any reason for which it would not abate if brought by the King—"pur ceo quelle est persone excellent ele avera bref en toutz pointz come le

roy avera." (Y. B. 17 & 18 Edw. III. p. 435 (Rolls Series).) In this case, too, it is said that she need not give security for costs, and it is doubted whether time runs against her. (See also Fitzh. N. B. 101 a; Co. Lit. 133 a.) Apparently she cannot be made to pay costs. (See 3 Bla. Comm. 400, where the reference to Fitzherbert should be as above.)

The Queen Dowager.

This lady is in the same position with regard to actions as any other subject. She is not entitled to an Attorney- and Solicitor-General as the Queen Consort is. Com. Dig. Action, C. 2, cites three instances from the Year Books in which a Queen Dowager was sued. Again, in Lilly's Entries, p. 151, we find, in 1694, an action of debt by Catherine of Braganza, then Queen Dowager, under the style of *Catharina Regina Dotissa Anglie, &c. v. Briggs*. A similar action was *Roigne Mother v. Challenor* (1667), 1 Sid. 295; 2 Keb. 81. In *A.-G. v. Tarrington* (1661), Hard. 219, the same lady joined with the Attorney-General as plaintiff in a bill in equity. In Y. B. M. 9 Hen. VI. pl. 36, Joan, Queen of Henry IV., was sued on a writ of annuity.

If the Queen Dowager marries a person who is not royal, she still sues and is sued alone under her royal title, as in the cases of the Queen Dowager of Navarre and Catharine ap Tudor. (2 Inst. 50.) See also Fowler, Exch. Pr. (ed. 2) I. 17, and *Savile v. Queen Mother* (1669), Hard. 502. *R. v. Lords Commrs. of the Treasury* (1851), 16 Q. B. 357; 20 L. J. Q. B. 305, was an application for a mandamus by the surviving trustee of the Queen Dowager, then recently deceased, to obtain payment of an apportioned part of her annuity.

The Prince of Wales and Duke of Cornwall.

The Prince of Wales may sue or be sued by writ in the ordinary way. (Staundf. Praerog. 75 b.) See *Prince de Gales v. Basset* (1348), Y. B. M. 21 Edw. III. pl. 46, and the case in Y. B. T. 1 Hen. V. pl. 2, where the King brought a *scire facias* to get execution on a judgment obtained by him, when Prince of Wales, against the Bishop of St. Asaph.

With regard to the Duchy of Cornwall, the nature of the Prince's estate is discussed in *The Prince's Case* (1604), 8 Rep. 1 a, while the position with regard to legal proceedings of the Prince of Wales, as Duke of Cornwall, and his Attorney-General is discussed in *A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167. It was decided in the latter case that the Prince had the right to file an English information by his Attorney-General for lands parcel of the Duchy of Corn-

wall. All the preceding instances of proceedings by information on behalf of the Prince were examined, and the information itself will be found in full at p. 268. See also the closely connected case of *A.-G. v. Plymouth Corporation* (1754), Wight. 134. *A.-G. v. Lambe* (1838), 3 Y. & C. 162; 8 L. J. Ex. 23; and *A.-G. of the Prince of Wales v. Lambe* (1848), 11 Beav. 213; 17 L. J. Ch. 154, were informations praying a declaration that the Crown and Duke respectively were entitled to certain waste and certain china clay thereunder.

In *A.-G. to the Prince of Wales v. Crossman* (1866), L. R. 1 Ex. 381; 4 H. & C. 568; 35 L. J. Ex. 215, which was an information to recover certain dues payable to the Prince, the defendant applied to change the venue to Devon. The Court decided the matter against the defendant on the ground of convenience, coupled with the consideration that there was such an interest in the Crown that the Attorney-General might appear and claim a trial at bar, but the Court was inclined to the opinion that the Prince's Attorney-General was in the same position with regard to venue as the Attorney-General of the Crown.

A.-G. of the Prince of Wales v. Bristol Waterworks Co. (1855), 10 Ex. 884; 24 L. J. Ex. 205, was an information alleging the diversion of water to which the Prince was entitled in right of his Duchy of Cornwall.

As to the procedure when the Duchy of Cornwall is in the hands of the Crown, there being no Duke of Cornwall, or where there is a Duke of Cornwall, but he has not yet obtained livery of the Duchy, see above, p. 1.

It has been stated (see Chitty, Prerog. 404) that the disabilities and advantages of minority do not apply to the Duke of Cornwall. But the authorities cited do not seem to bear out this view, and it is shown to be very doubtful by 5 & 6 Vict. c. 2, s. 6, which provides for the exercise by the Crown of the rights of the Prince as Duke of Cornwall during his minority.

The Heir Apparent's Establishment Act, 1795 (35 Geo. III. c. 125), contains special and peculiar provisions respecting the recovery of debts from the Heir Apparent. By sect. 7, creditors are to deliver particulars of their demands within ten days of the end of the quarter in which they accrue. By sect. 8, no action can be brought against the Heir Apparent in respect of such debts or the securities therefor, but, by sect. 9, the Treasurer or other principal officer or officers of the Heir Apparent to whom such particulars have been delivered, may be sued within three months of the delivery thereof in respect of such debt or demand. Judgment is not to be executed against the defendant or his effects, but is to be a charge on the funds of the Heir

Apparent in the defendant's hands. See the sections more fully set forth below, p. 571.

As to the rights of the Duke of Cornwall to the goods of intestates, see the article on the Solicitor of the Duchy of Cornwall below, p. 20.

The Consort of a Female Sovereign.

Such a personage has no rights other than those of a subject in respect of litigation. *Prince Albert v. Strange* (1849), 2 De G. & Sm. 652; on appeal, 1 Mac. & G. 25; 18 L. J. Ch. 120, was a bill filed by the Prince Consort in his own name against certain persons and the Attorney-General, to which was added an information laid by the Attorney-General on behalf of the Crown against the same persons and the Prince Consort, for the infringement of copyright in certain drawings and etchings belonging to the Prince Consort and the Queen respectively.

Other Members.

These, as such, have no special privileges whatever as litigants. The Princess of Wales, for instance, is to be found suing by her next friend under the old Chancery practice in *Princess of Wales v. Earl of Liverpool* (1819), 1 Swanst. 114; 3 Swanst. 567; 1 Wils. Ch. 113; 2 Wils. Ch. 29.

The Attorney-General.

General Observations.

His Majesty's Attorney-General is the proper legal representative of the Crown in the Courts. (See *R. v. Austen* (1821), 9 Price, 142, n.) He is primarily the officer of the Crown, and in that sense only the officer of the public. (*A.-G. v. Brown* (1818), 1 Swanst. 265, 294; compare *R. v. Wilkes* (1770), 4 Burr. 2527, 2570.) The Attorney-General appears on behalf of His Majesty; it is incorrect to say that His Majesty appears by his Attorney-General. The reason of this is attributed by Finch, Law 81—2, to the King's omnipresence, an attribute which he shares with the Deity (see below, p. 218), and this seems logical enough; but in *R. v. Gregory* (1672), 2 Lev. 82; 3 Keb. 127, Lord Hale, C.J., called the latter mode of description "well enough but unmannerly," and he is followed by Sir J. Wilmot, C.J., in *Wilkes v. R.* (1768), Wilm. 322, 327. The former mode of expression, however, is now universal.

The various cases in which the Attorney-General appears for the King are duly dealt with under their proper headings, but it will be proper here to mention a few points of practical importance, which

concern the privileges of the Attorney-General in his capacity of official litigant. It must be remembered that "it is for the officers of the Crown to make out clearly the prerogative, in any case where they claim to be on a different footing from the subject as regards procedure in any litigation." (*A.-G. to the Prince of Wales v. Crossman* (1866), L. R. 1 Ex. 381, 386; 4 H. & C. 568, 575; 35 L. J. Ex. 215. See also *Nireaha Tamaki v. Baker*, [1901] A. C. 561, 576; 70 L. J. P. C. 66.)

As far as civil litigation is concerned, there are few privileges which demand notice here. If the Attorney-General desires the postponement of a case for his convenience, the request is generally allowed. It has been said that he ought to apply in person and allege that he would be prevented from attending by public business, but in practice this is usually unnecessary. It has been stated that the Crown had a right of precedence in revenue cases in the Court of Exchequer. (*R. v. Landon* (1858), 1 F. & F. 381.) This is now of little or no importance owing to the present arrangement of business on the Revenue side of the King's Bench Division.

The Attorney-General takes precedence of King's Counsel in the Courts. He takes precedence of the Lord Advocate in all cases, whether Scottish or English, in the House of Lords or any other Court in which the Lord Advocate can practise. (*Case of A.-G. and L. A.* (1834), 2 Cl. & F. 481, 485.)

In *R. v. Prosser* (1848), 11 Beav. 306; 18 L. J. Ch. 35, the Court apprehended "that all Courts exercise over the Attorney-General the same authority which they exercise over every other suitor; and further, that the Attorney-General would not, any more than any other suitor, be permitted to prosecute any proceeding which was merely vexatious or which had no legal object." It added that in the case of a *scire facias* to repeal letters patent (and the observation would seem to apply equally well to other proceedings), the control was the Attorney-General's "subject only to the responsibilities to which every public servant is liable in the discharge of his duty, and subject to the jurisdiction which the Courts may have over him, upon a charge properly brought against him, for a negligent or erroneous performance of his duty." (See also *Peto v. A.-G.* (1827), 1 Y. & J. 509.) He is not likely, however, to abuse his privileges. (*Tobin v. R.* (1863), 32 L. J. C. P. 216, 224, per Willes, J.)

In *R. v. Hunt* (1820), 1 St. Tr. (N. S.) 171, at p. 315, Bayley, J., observed that an opinion given by the Attorney-General had no effect in Court, that the jury must take the law from him, the judge, and that he would have told the jury, if he himself and the Attorney-General differed, that the Attorney-General was wrong and he

himself was right. In *R. v. Horne* (1777), 20 St. Tr. 651, 740, the defendant sought to put the Attorney-General, who was prosecuting, into the box to be examined as to the circumstances under which the information came to be filed, but the Attorney-General refused to be examined, and Lord Mansfield said he could not force him.

The confession of the Attorney-General is not binding on the King in matter of law, though it be so in matter of fact. (*Wall v. Pennington* (1661), Hard. 170; see also *A.-G. v. Bagg* (1658), Hard. 125.) In *Anon.* (1582), Sav. 19, pl. 47, Shute, B., observes: "Le confession del Attorney le Roigne des matters en fait ne lye le Court."

In the matter of the granting of a fiat, the Attorney-General has the sole responsibility and discretion as to the grant or the refusal to grant, and the Court will not review his decision. The only remedy is with Parliament and the Crown. (See *R. v. Comptroller-General of Patents, Designs, and Trade Marks*, [1899] 1 Q. B. 909; 68 L. J. Q. B. 568, per A. L. Smith, L.J., cited more fully below, p. 124.) If, however, he refused to hear and consider the application for a fiat, the Court would compel him to do so by mandamus. (*E. p. Newton* (1855), 4 E. & B. 869; 24 L. J. Q. B. 246, a case relating to a writ of error.) Lord Mansfield, C.J., in *R. v. Wilkes* (1770), 4 Burr. 2527, 2551, is said to have expressed the opposite opinion, but the Court, in *E. p. Newton*, doubted if he really did so. In *E. p. Costello* (1868), Ir. R. 2 C. L. 380, the Attorney-General for Ireland refused to consider a writ of error without a fee of fifteen guineas, and a mandamus was applied for. The Court thought the fee was too large to have existed in the time of Richard I. and so to be chargeable by prescription, and the Attorney-General surrendered.

Service on the Attorney-General ought to be effected on the Treasury Solicitor, and not on the Attorney-General himself. (See *E. p. Mullay* (1828), 3 Moll. 70.)

The Right to Begin.

In *In re De Lancey's Succession* (1869), L. R. 4 Ex. 327, n., a petition of appeal under the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), it was stated to be the practice that the petitioner should begin, where it was admitted that some duty was payable and the whole question was as to the quantum. (See also *In re Micklethwait* (1855), 11 Ex. 452; 25 L. J. Ex. 19; *In re Earl Cowley's Succession* (1866), L. R. 1 Ex. 288; 35 L. J. Ex. 177.) *Secus*, where it was denied that any duty was payable, and where therefore it lay with the Crown to establish the contrary, as in *In re Greenwood* (1869), L. R. 4 Ex. 327; 39 L. J. Ex. 30, proceedings by writ under the Succession Duty Act, 1853.

It was the practice for the appellant to begin in cases stated by the Inland Revenue Commissioners under 13 & 14 Vict. c. 97. This was settled in *Marquis of Chandos v. Inland Revenue Commrs.* (1851), 6 Ex. 464, 20 L. J. Ex. 269, which was followed in *In re Gill's Conveyance* (1853), 8 Ex. 376, 380, n., and *Lord Foley v. Inland Revenue Commrs.* (1868), L. R. 3 Ex. 263; 37 L. J. Ex. 109. (See also *Lord Eglinton's Trustees v. Inland Revenue Commrs.* (1865), 3 H. & C. 871, 880, n.) It is the practice now that the appellants should begin in all cases, and the principle of *In re Greenwood* appears to be no longer observed. For instance, in *De Beers Consolidated Mines, Ltd. v. Howe*, [1905] 2 K. B. 612; 74 L. J. K. B. 934, where the question was one of complete exemption from income tax and not of quantum, the appellants began.

As to the order of the arguments and the right to reply in an appeal and cross-appeal on a special case stated in a revenue matter, see *Drake v. A.-G.* (1843), 10 Cl. & F. 257, below, p. 13.

The Right of Reply.

There remains for discussion the question of the right of reply, which was a matter of controversy for many years. As far as criminal cases are concerned, the matter may now be said to be summarised in the resolution come to by the judges in 1887 and printed, as of 1877, in *Taylor on Evidence* (ed. 10), p. 302, n.: "that in those Crown cases in which the Attorney-General and Solicitor-General is personally engaged, a reply, where no witnesses are called for the defence, is to be allowed, as of right, to the counsel for the Crown, and in no others." It is not very likely at the present day that a right of reply would be claimed by counsel for the Crown in a Treasury prosecution in which a Law Officer was not actually engaged, but the judges' resolution, it is apprehended, means that, where a Law Officer is actually engaged, the right of reply may be claimed either by one of the Law Officers, or by a junior counsel for the Crown on his behalf (but see *R. v. Abingdon (Earl)* (1795), 1 Peake, N. P. 236).

The matter of the right of reply in civil cases must be considered separately. (See an observation of the Attorney-General in *O'Connell v. R.* (1844), 11 Cl. & F. 155, at p. 231.)

In *Rowe v. Brenton* (1828), 3 Man. & R. 133, at p. 306, the Attorney-General claimed a general reply, on the ground that the proceeding was in the nature of an information in the Exchequer, and it was in substance as though the King were a party of the record. Lord Tenterden, C.J., said that, no instance being shown

in which the Attorney-General, in a case like that case, had a reply, the Court thought it safer not to extend the rule.

In *A.-G. v. Magill* (1829), 2 Ir. Law Rec. (O.S.) 312, the Court of Exchequer in Ireland, after some polite banter, allowed counsel for the Crown (not a Law Officer) to reply, as a matter of courtesy, in a revenue case.

In *A.-G. v. Tomsett* (1835), 2 C. M. & R. 170; 4 L. J. Ex. 171, the Solicitor-General was allowed to reply, after discussion, on showing cause against a rule for a new trial after verdict for the Crown on an information for penalties; see the similar case of *A.-G. v. Courtice* (1821), 9 Price, 450, 456.

In *Lord Dunglas v. Officers of State* (1842), 9 Cl. & F. 191, the House, after argument, informed the Attorney-General that it was not the usage of the House for the Attorney-General to have a general reply on the part of the Crown. This opinion is in the broadest terms, but the actual case in which it was given was one where the Crown was respondent.

In *A.-G. v. Trueman* (1843), 11 M. & W. 694; 13 L. J. Ex. 70, on a writ of extent, to which the defendant pleaded, the Crown made a general reply, but the matter was not discussed.

Drake v. A.-G. (1843), 10 Cl. & F. 257, was an appeal by a subject and a cross-appeal by the Crown. Counsel for the subject were heard continuously on both, and the counsel for the Crown on both, then counsel for the subject in reply, although it was a revenue matter.

In *R. v. Archbishop of Canterbury* (1848), 11 Q. B. 483, 560, n.; 17 L. J. Q. B. 252, the Crown's right of reply in mandamus proceedings was disputed but insisted upon on the ground that the Crown was, as the Attorney-General certified, interested in respect of its prerogative. The Court expressed a doubt, but decided that it would be convenient to hear the Attorney-General. He was heard accordingly, but declined to withdraw his claim of right.

In *R. v. Lords Commrs. of the Treasury* (1851), 16 Q. B. 357, 360, the Attorney-General claimed a right to reply, but suggested that he should be heard by consent, the fact not to be taken as a precedent either for or against his right. This course was adopted.

In *Marquis of Chandos v. Inland Revenue Commrs.* (1851), 6 Ex. 464, 478; 20 L. J. Ex. 269, the Solicitor-General claimed the general right of reply, and Pollock, C.B., said: "I am of opinion that the Solicitor-General has the right of a general reply in this case. It was admitted, at the bar of the House of Lords, upon one occasion when I appeared as Attorney-General in a case on the part of the Crown, that the officer of the Crown had the right of reply; and upon another occasion, in the Court of Queen's Bench, I claimed

the right of reply upon a motion, when it was conceded by Lord Denman, C.J., that such was the practice upon motion in the Court of Exchequer, and also in the Queen's Bench on prosecution, but not on motion. But in this Court [*i.e.*, the Exchequer] it has been the universal practice, whether on motion, on pleading, or on argument, that the officer of the Crown has the right to a general reply in all cases where the Crown is concerned."

The matter, then, is not so clear as could be wished. As to the House of Lords, the last-cited case seems to be a direct contradiction to the opinion of the House in *Lord Dunglas v. Officers of State* (1842), 9 Cl. & F. 191. There seems to be no doubt, however, as to the right of reply in the Exchequer, now the Revenue side of the King's Bench Division, and Pollock, C.B., agrees with observations or admissions which were made *arguendo* in *Rowe v. Brenton* (1828), 8 B. & C. 737; 5 L. J. (O. S.) K. B. 137, and *Lord Dunglas v. Officers of State, ubi sup.*, to the effect that the Attorney-General, when prosecuting an information in the King's Bench but not otherwise, has a right of reply. It is submitted that this will also be the case in Chancery.

Whether in any of these cases the right of reply can be claimed by anyone except one of the Law Officers, either in an instance where a Law Officer is personally engaged or where one is not, *quære*. (See *A.-G. v. Magill* (1829), 2 Ir. Law Rec. (O. S.) 312.)

As to the summing up of the whole of the evidence by the Attorney-General on a petition of right, see *Scott v. R.* (1861), 2 F. & F. 634.

In *The Parlement Belge* (1879), 4 P. D. 129; 48 L. J. P. 18, counsel for the plaintiffs objected to the Solicitor-General, on behalf of the Crown, being heard in reply on the whole case, on the ground that the Crown was not a party to the suit, but the objection was overruled by the Court.

As to the Attorney-General's right of reply for the King's Proctor in divorce, see below, p. 504.

The Solicitor-General.

"The Solicitor-General is the 'Secundarius Attornatus'; and as the Courts take notice judicially of the Attorney-General, when there is one, they take notice of the Solicitor-General, as standing in his place, when there is none. He is a known and sworn officer of the Crown as much as the Attorney, and, in the vacancy of that office, does every act and executes every branch of it." (*Wilkes v. R.* (1768), Wilm. 322, 330.) It was much debated in that case whether an information laid by the Solicitor-General, the office of Attorney-

General being vacant, was good. In *R. v. Wilkes* (1770), 4 Burr. 2527, 2554, Lord Mansfield, C.J., says: "Suppose the Attorney-General out of the realm, or under a disability from sickness, suppose the office of Attorney-General vacant—when it is, the business (which cannot stand still) must devolve upon another of the King's Counsel, and there is nothing so certain as that the whole business and authority of the Attorney devolves upon the Solicitor-General." It is quite plain from these passages that the Solicitor-General may take the place and perform the functions of the Attorney-General for all purposes, either when the Attorney-General is absent in any way, or incapacitated, or when his office is vacant. In the case of proceedings on the Revenue side of the King's Bench Division this is specifically provided for by the Crown Suits, &c. Act, 1865, s. 5 (1), below, p. 692. We find the Solicitor-General for Ireland filing an information and bill with relators in *S.-G. v. Dublin Corporation* (1877), Ir. R. 10 Eq. 512; 1 L. R. Ir. 166. In *S.-G. v. Bath Corporation* (1849), 18 L. J. Ch. 275, we find an information filed by the Solicitor-General during the vacancy of the Attorney-General's office, and heard together with a supplemental information filed by the subsequently appointed Attorney-General. *S.-G. v. Law Reversionary Interest Society* (1873), L. R. 8 Ex. 233; 42 L. J. Ex. 146, was an information filed by the Solicitor-General because the Attorney-General happened to be a director of the defendant society. So it was held by Lord Eldon, L.C., in *E. p. Skinner* (1817), 2 Mer. 453, that a certificate approving of a petition with regard to a charity should only be signed by the Solicitor-General when the office of Attorney-General was vacant.

Occasionally, where separate interests of the Crown require representation, or where the Crown requires representation independently of the formal appearance of the Attorney-General, as for instance in the case of an information with relators (see *A.-G. v. Galway Corporation* (1829), 1 Moll. 95, 101, n.), or in the case of proceedings relating to a charity, or where a friendly suit is necessary for the determination of some question of importance to the Crown, both the Attorney-General and Solicitor-General may be made parties, or may attend the hearing. A very good instance of such separate representation will be found in *A.-G. v. Dean and Canons of Windsor* (1860), 8 H. L. C. 369; 30 L. J. Ch. 529, where the Attorney-General appeared for himself as informant, the Solicitor-General for the Crown, and other counsel for the Ecclesiastical Commissioners. This was a case where the Attorney-General was making a claim on behalf of a charity which was inconsistent with alleged rights of the Crown. A similar case was *A.-G. v. Bristol Corporation* (1820), 2 Jac. & W. 294, see especially p. 312; see also *A.-G. v. Ironmongers' Co.* (1833), 2 My. & K. 576, 578, n.; *A.-G. v. Vivian* (1826), 1 Russ. 226, 238; and *Ellis v.*

Duke of Bedford, [1899] 1 Ch. 494, at pp. 504, 518; 68 L. J. Ch. 289, at pp. 295, 297. In *A.-G. v. Duke of Richmond, Gordon and Lennox* (No. 2), [1907] 2 K. B. 940; 76 L. J. K. B. 1049, the Attorney-General appeared for the Inland Revenue Commissioners, claiming estate duty, while the Solicitor-General appeared for the Parliamentary trustees of the defendant's estates.

The Attorney-General of the Duchy of Lancaster.

The position of the Crown in respect of the Duchy of Lancaster is discussed above, p. 3. Under the Intestates Estates Act, 1884, sect. 8 (p. 736), the Attorney-General of the Duchy of Lancaster takes the place of the Attorney-General for the purposes of the Duchy. The Attorney-General of the Duchy of Lancaster cannot exhibit an information in the High Court. (*A.-G. of the Duchy of Lancaster v. Duke of Devonshire* (1884), 14 Q. B. D. 195; 54 L. J. Q. B. 271.) As to proceedings by him in the Palatine Court, see *A.-G. of the Duchy of Lancaster v. London & North Western Railway Co.*, [1892] 3 Ch. 274; 62 L. J. Ch. 271; *A.-G. of the Duchy of Lancaster v. Liverpool New Cattle Market Co.* (1896), 12 T. L. R. 261; and *A.-G. of the Duchy of Lancaster v. Blackpool Corporation* (1907), 71 J. P. 478, the last two cases being proceedings by information with a relator.

Whatever precedence the Attorney-General of the Duchy has in the Courts of the Duchy, he has no precedence over any of his seniors at the Bar in other Courts. (See *Case of A.-G. and L.A.* (1834), 2 Cl. & F. 481, 487; *Paddock v. Forrester* (1842), 3 Man. & G. 903, 920, n.) In the case of an illegitimate and unmarried lunatic, who lived in Lancashire and had copyholds holden of the Duchy of Lancaster, it was held that the Crown was sufficiently represented in the lunacy proceedings by the Attorney-General, and the Court refused to give the Attorney-General of the Duchy of Lancaster leave to attend in addition. (*In re Kershaw* (1882), 21 Ch. D. 613.)

The Attorneys-General of the Queen Consort and of the Prince of Wales and Duke of Cornwall.

The position and functions of these officers are dealt with above, at pp. 6 and 7 respectively.

The Treasury Solicitor and the Solicitors to other Government Departments.

The Revenue Solicitors Act, 1828 (9 Geo. IV. c. 25), s. 1, provides that whenever any person has been or is or shall be appointed to be solicitor or attorney on behalf of His Majesty under the orders and

directions of the Commissioners of the Treasury, Customs, Excise, or Stamps, or of any Commissioners or other persons having the management of any other branch of the Revenue, such person may act and practise as such solicitor or attorney under such orders and directions in all Courts and places in any part of the United Kingdom, all laws or usages notwithstanding. (See *West v. Taunton* (1830), 6 Bing. 404; 8 L. J. (O. S.) C. P. 129.) Consequently the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 47, expressly exempts from its provisions any persons appointed to be solicitors of the Treasury, Customs, Excise, Post Office, Stamp Duties, or any other branch of the Revenue, and also the personages who are now represented by the Treasury Solicitor and his Assistants, acting for the affairs of the Admiralty and the War Office. A similar provision is to be found in sect. 50 of the Attorneys and Solicitors Act (Ireland), 1866 (29 & 30 Vict. c. 84). They are also exempted by the general words of sect. 33 of the Solicitors Act, 1860 (23 & 24 Vict. c. 127).

The Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12, declares that a person shall be deemed to be duly qualified, for the purpose of avoiding the penalties imposed by the section, if he has been appointed to be solicitor of the Treasury, Customs, Inland Revenue, Post Office, or other branch of the Revenue, or of any Public Department, including the Department of the Ecclesiastical Commissioners and of the Governors of Queen Anne's Bounty, or if he be a clerk or officer appointed to act for the solicitor for any Public Department as thereinbefore described.

It will be observed from these provisions that, though the clerks and officers acting for the above-mentioned solicitors are exempt from the penalties attaching to unqualified persons acting as solicitors, yet they are not definitely given power to act and practise in any Court, that power being only conferred on the solicitors themselves. It is, however, specially provided, in the case of the Customs, by the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 273 (below, p. 728), that the solicitor and assistant solicitor of the Customs, or any clerk directed by them, may act as counsel, solicitor, &c. in a Customs case in any Court, and that they or any officer of Customs under the direction of the Commissioners may conduct any Customs proceeding before justices. So, in the case of the Inland Revenue, by the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 27 (below, p. 742), any officer or person employed or authorised by the Inland Revenue Commissioners, or by the Solicitor of Inland Revenue in that behalf may, although not a solicitor, advocate, or writer to the signet, conduct any proceeding before any justice of the peace or sheriff relating to Inland Revenue, and the Finance Act, 1896

(59 & 60 Vict. c. 28), s. 38, adds that any solicitor authorised by the Commissioners may appear in, conduct, or defend such proceedings in any County Court in England or Ireland.

The Treasury Solicitor stands in a very special position. By the Treasury Solicitor Act, 1876 (39 & 40 Vict. c. 18), s. 1: "The person for the time being holding the office of Solicitor for the affairs of Her Majesty's Treasury shall be a corporation sole by the name of the Solicitor for the affairs of Her Majesty's Treasury, and by that name shall have perpetual succession, with a capacity to acquire and hold in that name lands, Government securities, shares in any public company, securities for money, and real and personal property of every description, to sue and be sued, to execute deeds, using an official seal, to make leases, to enter into engagements binding on himself and his successors in office, and to do all other acts necessary or expedient to be done in the execution of his office. Any document purporting to be sealed with the said official seal shall be receivable in evidence of the particulars stated in such document."

By sect. 3, an Assistant Solicitor for the affairs of Her Majesty's Treasury may do anything which the Treasury Solicitor is required or authorised to do for the purpose of any Act, or otherwise in the execution of his duties.

The Treasury Solicitor is also Director of Public Prosecutions, and at present is also King's Proctor (see below, p. 19).

The statutes relating to the Treasury Solicitor were discussed at some length in *R. v. Archbishop of Canterbury*, [1903] 1 K. B. 289; 72 L. J. K. B. 188, where it was sought to be argued that the Treasury Solicitor could not, even by direction of the Crown, act as solicitor for a private individual (in that case the Archbishop), but could only act in his official capacity, and that if he so acted he was an unqualified person, and his client could not recover costs. It was held that if the Crown thought proper to order him to appear for a private person, he was a duly qualified solicitor when so appearing, and that his client could recover his costs. The head-note to the case in adding "in any matter in which the Crown has an interest" does not seem to be quite correct. If the Crown chose to order the Treasury Solicitor to appear for any person, the Court could not inquire whether, in fact, the Crown's interests were concerned or not.

It should be added that, by a new rule (Ord. XXXVII. r. 60), where a commission rogatoire, or letter of request, is transmitted to the Supreme Court by the Foreign Office, with an intimation that it is desirable that effect should be given to it without requiring an application to be made to the Court by the agents of any of the parties, the Senior Master is to transmit it to the Treasury Solicitor, who may

thereupon, with the consent of the Treasury, make such application and take such steps as may be necessary to give effect to it in accordance with Rules 54 to 58 of the Order.

On receiving the commission rogatoire, or letter of request, from the Senior Master, the Treasury Solicitor applies *ex parte*, with an affidavit setting out such receipt and the person who, and the time and place which, have been discovered to be suitable for the examination of the witnesses in question, obtains an order for the examination of the witnesses before such person and at such time and place under Ord. XXXVII. r. 54, and serves the order on the witnesses. The examiner sends the examination to the Senior Master under Ord. XXXVII. r. 57, and the Treasury Solicitor sends to the Senior Master a statement showing the expenses incurred, if payment thereof by the foreign Government is sought. The Senior Master then transmits the papers and the examination to the Foreign Office under Ord. XXXVII. r. 57, with an intimation that the expenses incurred in giving effect to the commission rogatoire, or letter of request, are as stated in the Treasury Solicitor's notification to that effect. (*In re Galavis and Hermann* (1907), not reported.)

The position and duties of the Treasury Solicitor with respect to petitions of right and probate and administration on behalf of the Crown are dealt with below under their appropriate headings, pp. 384, 464, 495.

The King's Proctor.

The Treasury Solicitor at present doubles the part of King's Proctor with his own. His duties in the latter capacity in Divorce and Admiralty matters are dealt with below, pp. 501, 513.

The Director of Public Prosecutions.

The appointment and duties of this official are provided for by the Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), and Regulations made thereunder. By the Prosecution of Offences Act, 1884 (47 & 48 Vict. c. 58), s. 2, it is enacted that the Treasury Solicitor for the time being shall be the Director of Public Prosecutions, and that the Assistant Solicitors to the Treasury may act for him.

There is no provision for suits by or against this official, but in *Stubbs v. Director of Public Prosecutions* (1890), 24 Q. B. D. 577 ; 59 L. J. Q. B. 201, we find an action against him for the costs of criminal proceedings alleged to be payable by him. The action appears to have been brought by consent and was decided on a special case.

The Solicitor of the Duchy of Lancaster.

The Solicitor of the Duchy of Lancaster would appear to be included in the general words of the Attorneys and Solicitors Act, 1874, s. 12 (see above, p. 17); but *quære* whether he falls within sect. 1 of the Revenue Solicitors Act, 1828 (9 Geo. IV. c. 25) (see above, p. 16).

The Intestates Estates Act, 1884, c. 8 (p. 736), places him in the same position for the purposes of the Duchy under that Act as that in which the Treasury Solicitor stands outside the Duchy.

With respect to the administration of persons dying in the Duchy of Lancaster without known relatives, the Solicitor for the affairs of the Duchy stands in the same position as that in which the Treasury Solicitor stands with respect to such persons in general (see below, pp. 492, 495). The grant is to the Solicitor for the Duchy as the nominee of His Majesty, for the use of His Majesty in right of his said Duchy. *In the Goods of Best*, [1901] P. 333; 71 L. J. P. 9, dealt with a difficulty which arose in respect of such estates left unadministered at the death of Queen Victoria. His present Majesty by warrant countersigned by the Chancellor of the Duchy authorised His Majesty's Advocate and Procurator-General to apply to the Probate Division for a grant of letters of administration to the Solicitor of the Duchy. The Court permitted the executors of the late Queen to nominate the Solicitor to take the grants on their behalf, but with the usual bond, though without sureties.

The Solicitor of the Duchy of Cornwall.

It is provided by the Stannaries Act, 1855 (18 & 19 Vict. c. 32), s. 31, that any person appointed by the Prince of Wales or other the personage for the time being entitled to the possessions of the Duchy of Cornwall to act as attorney or solicitor in the affairs of the said Duchy may act and practise as such in such affairs in all Courts and places in the United Kingdom, all statutes, rules or usages notwithstanding.

The Duke of Cornwall is entitled to letters of administration for his own use of the estate of persons dying in the Duchy without known relatives. Application is made to the Court by the Solicitor of the Duchy, as in *Solicitor of the Duchy of Cornwall v. Canning* (1880), 5 P. D. 114. It is usual for the Solicitor to the Treasury not to oppose, but to abstain from opposition "without prejudice to the rights of the Crown," whatever they may be. See, in general, the law and practice relating to administration, below, pp. 492, 495.

The Official Solicitor.

This personage, of somewhat vague and undefined functions, cannot be party to an action in his official capacity, and he therefore lies outside the scope of this work. A general survey of his origin and duties will be found in *Moutrie v. Mitchell*, [1901] 1 K. B. 596; 70 L. J. K. B. 401.

The Treasury.

The Lord High Treasurer or the Commissioners of His Majesty's Treasury (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (2)) can, in general, neither sue nor be sued. *In re Lords of the Treasury* (1836), 7 Sim. 154, affirmed 1 My. & Cr. 676, was merely a petition for an order against the Lords of the Treasury that they should pay the expenses of re-investment of the purchase-money of lands purchased by them under certain Acts of Parliament. But in *Ellis v. Earl Grey* (1833), 6 Sim. 214, a bill was filed against the Lords of the Treasury for a declaration, an account, a decree for payment or a receiver, and an injunction to restrain the defendants from paying compensation under 11 Geo. IV. & 1 Will. IV. c. 58, to certain persons. The Treasury demurred, on the ground that they were sued as public officers as to matters which related exclusively to their duties as such. The Court granted the injunction, on the ground that it did not interfere with any public duty of the Treasury or with any discretion which they had to exercise in their public capacity, but that it restrained them from doing a mere ministerial act. It was pointed out on behalf of the Treasury that in *Oldham v. Lords of the Treasury*, not reported, a bill to compel payment was dismissed, on the ground that the money there in question could only be recovered by petition of right. The Court, however, relied on *Rankin v. Huskisson* (1830), 4 Sim. 13. (See below, p. 77. See also *Priddy v. Rose* (1817), 3 Mer. 86, below, pp. 37, 644.) It appears to the author, however, that the Court's decision cannot be supported.

Petitions for the replacement of funds under the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 5, are served on the Treasury (see the article on the Paymaster-General, below, p. 86); and so are petitions for leave to traverse an inquisition of escheat (see p. 438).

Under the Inebriates Act, 1898 (61 & 62 Vict. c. 60), where the Treasury has contributed to the maintenance of an inebriate under sect. 8, it may apply, as an "authority contributing" under sect. 12, to the County Court for an order for the payment of the expenses

incurred from the property of the lunatic. In the cases in which such applications have been made hitherto, they have been made by the Treasury Solicitor on behalf of the Treasury.

The Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 21, gives the Treasury a right of appeal from any order of a British Slave Court, which involves the payment of money by the Treasury, as if it were a party to the proceedings. For claims by the Treasury in bankruptcy and companies winding-up, see below, p. 525.

In Scotland, by the Crown Lands (Scotland) Act, 1835 (5 & 6 Will. IV. c. 58), s. 1, after a recital of certain Acts which had caused doubts, it is provided: "All powers and authorities for the ascertaining and recovering and for the management, superintendence and care of all rights of His Majesty, his heirs and successors, in right of his Crown in Scotland, as *ultimus hæres*, or in cases of bastardy, or by reason of any forfeiture whatsoever, shall be and are hereby declared to be vested in the Lord High Treasurer or the Commissioners of His Majesty's Treasury, or any three or more of them, for the time being, in the same manner and to the same extent as such powers were vested in the Lord High Treasurer or the Commissioners of the Treasury for the time being prior to the passing of any of the said recited Acts, anything in the said Acts or either of them to the contrary notwithstanding." For the effect of this section, see *Lords of the Treasury v. Campbell's Trustees* (1836), 14 S. 657; 11 F. D. 556; see, too, *Maclean v. Lords Commrs. of the Treasury* (1840), 15 F. D. 1448.

The Home Office.

His Majesty's Principal Secretary of State for the Home Department has, in general, no power to sue or be sued. The case entitled *Ruff v. Secretary of State for the Home Department* (1896), 60 J. P. 343, was merely an appeal from quarter sessions by case stated under the Police Act, 1890 (53 & 54 Vict. c. 45), s. 11, on a question of a policeman's pension.

By the Housing of the Working Classes Act, 1903 (3 Edw. VII. c. 39), ss. 3, 16, and Schedule (9), the Secretary of State may recover by action in the High Court penalties incurred, within the administrative County of London, by undertakers who enter on any working men's dwellings in contravention of the provisions of the schedule, or of any conditions imposed by the Secretary of State. Such a provision was formerly inserted, where appropriate, in private Acts, and proceedings were commenced by the Home Secretary under such a provision in the London and North Western Railway Act, 1900 (63 & 64 Vict. c. cxxv.), s. 50.

Under the Aliens Act, 1905 (5 Edw. VII. c. 13), s. 4, the Secretary of State, where an expulsion order is made in the case of any alien, may, if he thinks fit, pay the whole or any part of the expenses of, and incidental to, the departure from the United Kingdom, and maintenance until departure, of the alien and his dependents. If an expulsion order is made in the case of any alien (not being an alien who has entered the United Kingdom before the commencement of the Act, or an immigrant in whose case leave to land has been given under the Act) on a certificate given within six months after he has last entered the United Kingdom, the master of the ship in which he has been brought to the United Kingdom, and also the master of any ship belonging to the same owner, shall be liable to pay to the Secretary of State as a debt due to the Crown any sums paid by the Secretary of State under the section in connection with the alien. Such debt is recoverable by information, as in *A.-G. v. Sutcliffe*, [1907] 2 K. B. 997; 76 L. J. K. B. 991.

Under the Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 12, where an inebriate is detained in a State reformatory, the Secretary of State may authorise a person to apply to the County Court for the payment of the expenses of his maintenance out of his property.

In *Cobbett v. Grey* (1849), 4 Ex. 729; 19 L. J. Ex. 137, it was held that the defendant, Grey, who was then Home Secretary, would be liable in trespass if a person was removed from one part of a prison to another under a General Order made by him for the classification of prisoners, which he had no legal authority to make, though in that particular case judgment must be given for the defendant.

The general principles on which this decision rests are discussed below, p. 641.

Irwin v. Grey (1862), 3 F. & F. 635, was an action against the same Home Secretary for not submitting the plaintiff's petition of right to the Sovereign. It was proved by the evidence of the defendant that he had submitted the petition with the advice that the fiat should not be granted. It was held that there must be a verdict for the defendant, and the Court, in further proceedings on the plaintiff's motion, suggested that the Home Secretary ought not to have divulged what advice he had given to the Crown.

The Colonial Office.

His Majesty's Principal Secretary of State for the Colonies has no power to sue or to be sued as such.

The Foreign Office.

His Majesty's Principal Secretary of State for Foreign Affairs has, in general, no power to sue and no liability to be sued.

Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co., [1901] A. C. 373; 70 L. J. P. C. 25, was a case, as appears from the printed record, comprising two appeals and two cross-appeals, and arising out of objections taken by the expropriated persons to an award of compensation for lands acquired by the British Government for the purpose of the Uganda Railway under the Indian Land Acquisition Act, 1894, as extended and applied to the British East Africa Protectorate, and referred to the Court in pursuance of sect. 18 of that Act.

For an abortive bill in equity against the Secretary of State, see *Grenville-Murray v. Earl of Clarendon* (1869), L. R. 9 Eq. 11; 39 L. J. Ch. 221, below, p. 645.

The India Office.

The Secretary of State in Council of India may sue and be sued as successor of the East India Company.

By the Government of India Act, 1858 (21 & 22 Vict. c. 106), ss. 1, 2, the government of the territories then in the possession or under the government of the Company and all powers in relation thereto are vested in the Crown, and are to be exercised in the name of Her Majesty, and all revenues, tributes, and other payments are to be received for and in the name of Her Majesty, and are to be applied and disposed of for the purposes of the Government of India alone.

By sect. 3, save as in the Act otherwise provided, one of Her Majesty's Principal Secretaries of State shall have and perform all such or the like powers and duties in anywise relating to the government or revenues of India, and all such or the like powers over all officers appointed or confirmed under the Act, as might or shall have been exercised or performed by the East India Company.

By sects. 39, 40, all real and personal estate of the Company, subject to the debts and liabilities affecting the same, and the benefit of all contracts and all other emoluments belonging to the Company, except the Company's capital stock and the dividend thereon, are vested in the Crown, to be applied for the purposes of the Government of India. The Secretary of State in Council, with the concurrence of a majority of votes at a meeting, may sell and dispose of all such

real and personal estate, and may raise money on any such real estate, and may purchase any real or personal property, and may enter into any contracts whatsoever for the purpose of the Act, and all property so acquired shall vest in the Crown for the service of the Government of India. [These powers are explained and amplified by the Government of India Act, 1859 (22 & 23 Vict. c. 41).]

By sect. 65: "The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies, and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would while vested in the said Company have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said Company."

By sect. 67: "All treaties made by the said Company shall be binding on Her Majesty, and all contracts, covenants, liabilities, and engagements of the said Company made, incurred, or entered into before the commencement of this Act may be enforced by and against the Secretary of State in Council in like manner, and in the same Courts, as they might have been by and against the said Company if this Act had not been passed."

By sect. 68: "Neither the Secretary of State nor any member of the Council shall be personally liable in respect of any such contract, covenant, or engagement of the said Company as aforesaid, or in respect of any contract entered into under the authority of this Act, or other liability of the said Secretary of State or Secretary of State in Council in their official capacity; but all such liabilities, and all costs and damages in respect thereof, shall be satisfied and paid out of the revenues of India."

In strictness, under sect. 65 of the Act, the Secretary of State ought to sue or be sued as "The Secretary of State in Council," and this was done, for instance, in the recent case of *Salaman v. Secretary of State in Council of India*, [1906] 1 K. B. 613; 75 L. J. K. B. 418 (here "of India" has been added by the reporter); but, for the sake of clearness, it seems better to entitle him "The Secretary of State in Council of India."

"The Secretary of State in Council" must be regarded as merely a formal personage, who is to sue and be sued in lieu of, and as successor of, the East India Company. In *Kinloch v. Secretary of*

State for India in Council (1882), 15 Ch. D. 1; 49 L. J. Ch. 571, James, L.J., observed: "There really is, in point of law, no such person or body politic whatever as the Secretary of State for India in Council. When you look at the Act 21 & 22 Vict. c. 106, which put an end to the East India Company, all the property and assets of the East India Company were not transferred to any body corporate which were successors to the East India Company, but were vested in the Crown in trust for the Government of India; and 'The Secretary of State for India in Council' [*Note*.—These words do not occur in the Act; the proper title is "The Secretary of State in Council of India" (see sects. 43, 45, 65); *secus* in suits in India (see below, p. 29)], which are mere words providing that that officer and department could be capable of suing and being sued, are nothing more, in my judgment, than words indicating the mode by which the Government of India is to sue and be sued; that is to say, the mode in which the Indian Exchequer might itself institute proceedings, and might be made the subject of proceedings, for the purpose of determining the rights between any of Her Majesty's subjects and that Government." Similar observations are made by Lord O'Hagan in the same case in the House of Lords (7 A. C. 619; 51 L. J. Ch. 885). In that case it was sought to fix the defendant with some sort of liability as a trustee of certain booty, which had been entrusted to him by the Crown for distribution, and the decision shows that sect. 65 of the Government of India Act, 1858, was not intended to authorise suits against the Secretary of State in such a semi-personal capacity, but must be strictly confined to its actual terms. Lord Selborne, L.C., says: "He is here sued as a corporation. It is not the individual who now happens to fill that office who is sued, but it is the officer bearing that description—a remarkable and special description, derived evidently from sect. 65 of 21 & 22 Vict. c. 106, which simply enacted that suits to establish rights which, if that Act had not been passed, would have belonged to the East India Company, and for which they might have sued, and, again, suits to establish claims which, if that Act had not been passed, would have been proper to be made in actions at law or suits in equity against the East India Company, might be brought by or against the Secretary of State for India in Council. The enactment seems to proceed on the same principle on which, in Banking Acts, public officers are authorised to sue and be sued as representing the persons really entitled or liable. This is no doubt a very high public officer; and the designation 'in Council' is added, I suppose, in order that all matters arising out of such suits may be considered, not only by himself individually, but by himself in his Council.

Whatever the reason for that may have been, the enactment is limited as I have expressed it; and this is clearly not a suit brought against him as representing the late East India Company, or which can by any possibility be described as a suit which, if the Indian Government Act had not been passed, might have been brought against the East India Company. Therefore, so far, there seems to be no ground for suing the Secretary of State for India in Council in the manner in which he is here sued." Kinloch then tried a petition of right (*Kinloch v. R.*, [1882] W. N. 164; [1884] W. N. 80), with no different results.

In *Underwood v. Secretary of State in Council*, [1868] W. N. 136; 35 L. J. Ch. 545; 14 L. T. 385; 18 L. T. 351; 19 L. T. 270, and *Thomas v. Secretary of State for India in Council* (1870), 18 W. R. 312, the Secretary of State was sued as successor of the East India Company in respect of alleged over-payments to the Madras Civil Service Annuity Fund.

In cases where the Act does apply, the subject is confined to his remedy thereunder, and cannot proceed by petition of right, inasmuch as the sum claimed, if recovered, ought to come out of the revenues of India, and not those of England. Thus, in *Frith v. R.* (1872), L. R. 7 Ex. 365; 41 L. J. Ex. 171, a petition of right to recover from the Crown a debt alleged to have become due from the Sovereign of Oudh before the annexation of that province was dismissed on the ground that the suppliant had mistaken his remedy. Bramwell, B., observes: "We must, in my opinion, look at the Act of 1858 as a whole; and I think it manifest that, whilst it transferred the sovereignty of India to the Crown, it did not transfer the obligation to pay previously unenforceable debts. If these were transferred at all, they were transferred to the Secretary of State. Moreover, looking at the matter practically, it is perfectly plain that the revenues of England cannot be liable to pay this claim, and that a judgment for the suppliant would be a barren one."

We must next discuss the very important question, in respect of what species of acts the East India Company, before the Act of 1858, and consequently the Secretary of State in Council after that Act, might and may be sued. The difficulty arises from the dual capacity of the East India Company as a sovereign power and as a trading organization. The first case which dealt with the matter was *Moodalay v. Morton* (1785), 2 Dick. 652; 1 Bro. C. C. 469, per Kenyon, M.R.: "It hath been said that the East India Company have a sovereign power: be it so; but they may contract in a civil capacity: it cannot be denied but in a civil capacity they may be sued: in the case now before the Court, they entered into a private contract; if they break their contract, they are liable to answer for it."

This judgment was cited by Wood, V.-C., in *Prisleau v. United States* (1866), L. R. 2 Eq. 659; 36 L. J. Ch. 36, and the same distinction was insisted upon in *Gibson v. East India Co.* (1839), 5 Bing. (N. C.) 262; 8 L. J. C. P. 193.

How far, then, may the Secretary of State in Council be sued in respect of acts for which the Crown, as such, would not be liable? *Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India* (1861), 2 Bourke, 166; 2 Bom. H. C. App. A., decided that the Secretary of State in Council was liable for damages occasioned by the negligence of servants in the service of the Government, if the negligence was such as would render an ordinary employer liable. Peacock, C.J., said (5 Bom. H. C. App. A. at p. 13): "We are of opinion that the East India Company were not sovereigns, and therefore could not claim all the exemptions of a sovereign; and that they were not the public servants of Government, and, therefore, did not fall under the principle of the cases with regard to the liabilities of such persons; but they were a company to whom sovereign powers were delegated, and who traded on their own account and for their own benefit, and were engaged in transactions partly for the purposes of government and partly on their own account; which, without any delegation of sovereign rights, might be carried on by private individuals." (See also *Seth Dunraj v. Hankin and Secretary of State for India* (1869), 1 N. W. P. Rep. 118; (ed. 1873) 204.)—*Nobin Chunder Dey v. Secretary of State for India* (1875), I. L. R. 1 Cal. 11, states the proposition in the form that suits against the East India Company, and, after the Act of 1858, against the Secretary of State in Council, are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. *Jehangir M. Cursetji v. Secretary of State for India in Council* (1902), I. L. R. 27 Bom. 189, is the most recent case and repeats the same opinion. Tyabji, J., at p. 212, says: "Without going through these authorities in detail, I may say at once that they have established very clearly that the East India Company could only have been sued in regard to those matters for which private individuals or trading corporations could have been sued, or in regard to those matters for which there was express statutory provision, and, conversely, they establish that no suit would lie against the East India Company in respects of acts of State or acts of sovereignty." The learned judge appears to think that he can bisect the causes of action into "those for which private individuals or trading corporations could have been sued" and "acts of State or acts of sovereignty." But this is not in fact a complete division. There is a class of acts which lies between these two classes, and in respect of that class the Company, and now

the Secretary of State in Council could and can undoubtedly be sued. Those acts are acts which do not amount to "acts of State," but which no private individual or trading corporation could have accomplished. A good instance of a suit in respect of such acts is *Forester v. Secretary of State for India in Council* (1872), L. R. I. A. Supp. 10, and the same point of view is emphasised by the remarks of Stuart, C.J., in *Kishen Chand v. Secretary of State for India in Council* (1881), I. L. R. 3 All. 829, and of Fletcher Moulton, L.J., in *Salamán v. Secretary of State in Council of India*, [1906] 1 K. B. 613; 75 L. J. K. B. 418. The true doctrine, it is submitted, is stated in the headnote to *Secretary of State for India in Council v. Hari Bhánji* (1882), I. L. R. 4 Mad. 344; 5 Mad. 273: "Where an act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the civil Courts." The Secretary of State in Council, it is submitted, is liable to be sued, as successor of the East India Company, for every act which is not an "act of State," whether it is an act which could have been done by a private individual or trading corporation or not. It may be observed that the Secretary of State in Council, acting for the Crown, has the same power as the Crown of dismissing a military officer at will (*Grant v. Secretary of State for India in Council* (1877), 2 C. P. D. 445; 46 L. J. C. P. 681), and is not amenable to an action for libel in his official communications. (*Chatterton v. Secretary of State for India in Council*, [1895] 2 Q. B. 189; 64 L. J. Q. B. 676.)

Suits by or against the Government or public officers in India are governed by sects. 416—429 of the Code of Civil Procedure, 1882. The official title by which the Secretary of State in Council is to be sued there is "The Secretary of State for India in Council" (sects. 416, 418). No suit is to be instituted against the Secretary of State in Council or against a public officer in respect of an act purporting to be done by him in his official capacity until the expiration of two months after notice in writing has been given. By a special provision in the Indian Limitation Act, 1877, Sched. 2, No. 149, suits by or on behalf of the Secretary of State for India in Council may be brought within sixty years. In *Secretary of State in Council of India v. Bombay Landing and Shipping Co., Ltd.* (1868), 5 Bom. H. C. O. C. J. 23, it was held that a judgment debt due to the Secretary of State was entitled to the same precedence in execution as a judgment debt due to the Crown in England, in the absence of any legislative provision to the contrary, and that the nature of

the cause of action in respect of which it arose made no difference. So *Ganpat Putaya v. Collector of Kanara* (1875), I. L. R. 1 Bom. 7.

The English Courts will not entertain an action against the Secretary of State in Council which would more properly be brought in India, inasmuch as under the Government of India Act, 1858, he is equally suable in either country. Thus, in *Doss v. Secretary of State for India in Council* (1875), L. R. 19 Eq. 519, at p. 535, Malins, V.-C., says: "Where there is a complete tribunal capable of deciding the question where the property is and where the parties are, that is the tribunal to be resorted to. Now, what is the property here?" He points out that the property (a debt) is in India, and continues: "I agree with the observation of Mr. Macnaghten that the Secretary of State for India is also there, because they can just as well sue him in that country as in this. There is no single advantage to be derived from suing him in this Court; he is present there, and he is present here, and therefore the subject-matter in dispute being in India, the plaintiff resident in India, and the Secretary of State being in India, all circumstances seem to me to concur in saying that if this is a case to be sustained at all, it is in the Indian Courts, and not in the Courts of this country, that the suit should be brought." So in *Reiner v. Marquis of Salisbury* (1876), 2 Ch. D. 378 (here by a freak of the pleader the Secretary of State was sued by his personal appellation), the same judge dismissed a bill for discovery to obtain inspection of documents in the defendant's possession in England in aid of proceedings about to be taken in England for the recovery of land in India, pointing out that this suit, being for the recovery of land, was a stronger case than *Doss v. Secretary of State for India in Council*. See further the cases on petitions of right for the recovery of land abroad, below, p. 360.

The War Office.

General Observations.

His Majesty's Principal Secretary of State for the War Department cannot sue or be sued except by special statutory provision. Wickens, V.-C., indeed, observes in *Kirk v. R., A.-G. v. Kirk* (1872), 14 Eq. 558: "In this Court the Secretary of War has sued and been sued. There may have been more or less consent, but he has been sued and has sued like any other suitor"; but this dictum, in so far as it suggests any encroachment on the prerogative in the case of the Secretary of State for War, cannot be accepted. In the same case it is suggested that the Secretary of State ought to be made a party to an information by the Attorney-General against a War Office contractor. *Sed quare*. The author is unaware of its ever having been done.

Suits as to Military Stores, &c.

By sect. 20 of the War Department Stores Act, 1867 (30 & 31 Vict. c. 128), "The Secretary of State for War may institute and prosecute any action, suit, or proceeding, civil or criminal, concerning military or ordnance stores, or other Her Majesty's stores under the charge or control of the Secretary of State for War, or any stores sold or contracted to be delivered to or by the Secretary of State for War for the use or on account of Her Majesty, or the price to be paid for the same, or any loss or injury of or to any such stores as aforesaid, and may defend any action, suit, or proceeding concerning any such stores, matter, or thing as aforesaid, and in every such action, suit, or proceeding the Secretary of State for War may be so described, without more; and any such action, suit, or proceeding shall not be affected by any change in the person for the time being holding the office of Secretary of State for War: Provided always as follows:—

"(1.) Nothing here-in shall take away or abridge in or in relation to any such action, suit, or proceeding any legal right, privilege, or prerogative of the Crown, and in all such actions, suits, and proceedings, and in all matters and proceedings connected therewith, the Secretary of State for War may exercise and enjoy all such rights, privileges, and prerogatives as are for the time being exercised and enjoyed in any proceeding in any Court of law or equity by the Crown, as if the Crown were actually a party to such action, suit, or proceeding:

"(2.) It shall be lawful for Her Majesty, her heirs and successors, if and when it seems fit, to proceed by information in the Court of Exchequer [now the Revenue side of the King's Bench Division], or by any other Crown process, legal or equitable, in any case in which it would have been competent for Her Majesty, her heirs or successors, so to proceed if no provision respecting procedure had been inserted in this Act."

The procedure permitted by this section is frequently exercised. It has been usual to use the words "His Majesty's Principal Secretary of State for the War Department" in the title of such suits, but it would seem that the description under the section ought, in strictness, to be "the Secretary of State for War."

It will be observed that the Secretary of State is entitled to all the privileges of the Crown as litigant; that is to say, he will be entitled to exercise all the privileges as to venue, discovery, &c., described in Book VI. of this work.

It will also be observed that the Crown may sue in respect of the matters mentioned in the section by ordinary prerogative process, and this has not infrequently been done.

The section is of wide application ; it would cover any sort of stores or contract for stores. *Secretary of State for War v. Wynne*, [1905] 2 K. B. 845 ; 75 L. J. K. B. 25, for instance, was an action to recover damages for illegally distraining an army horse. *Secretary of State for War v. Studdert*, [1901] 1 I. R. 346, was an action for damages for fraudulent breach of duty, fraudulent misrepresentation, negligence and conspiracy in connection with the purchase of horses for the Imperial Yeomanry for the war in South Africa. In another case, dealing with the supply and carriage of such horses, the Crown proceeded by English information. (*A.-G. v. Van Laun* (1902), not reported.)

It was held by the Judge in Chambers in *Kynoch, Ltd. v. Secretary of State for War* (1907), not reported, that the words "may defend," coupled with the provisoes to the section, mean that the Secretary of State can only be sued with his own consent ; but it may well be doubted whether this was the intention of the legislature, and this doubt is supported by the observations of the Court in *Williams v. Lords Commrs. of the Admiralty* (1851), 11 C. B. 420 ; 20 L. J. C. P. 245 (see below, p. 40).

It would follow that in such an action by the Secretary of State the defendant could counterclaim.

Suits as to Lands.

By the Defence Act, 1842 (5 & 6 Vict. c. 94), s. 34: "It shall be lawful for the " principal Officers of Her Majesty's Ordnance, "and their successors for the time being, and they are hereby authorised and empowered, to bring, prosecute, and maintain any action or actions of ejectment, or other proceedings in law or in equity, for recovering possession of any messuages, buildings, castles, lines, or other fortifications, manors, lands, tenements, or hereditaments, as now are or hereafter may be vested in them by this Act, or otherwise howsoever, and to distrain or sue for any arrears of rent which shall have become or shall become due for or in respect thereof under any parol or other demise from the said principal Officers, and also to bring, prosecute, and maintain any other action or suit in respect of or in relation to such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments last aforesaid, or of any trespass or encroachment committed thereon, or damage or injury done thereto, and also upon all covenants and contracts whatsoever now or hereafter made by, to, or with the said principal Officers relating to the said ordnance or barrack department, or the defence of the realm, and also to prosecute any other action, suit, or legal proceedings, civil or criminal, concerning the goods or

chattels, stores, monies and other property under the care, control and disposition of the said principal Officers; and that in every such action, suit or other proceedings the said principal Officers for the time being shall be called 'The principal Officers of Her Majesty's Ordnance,' without naming them or any of them; and no such action, suit, or other proceedings shall abate by the death, resignation or removal of such principal Officers, or any of them, anything in any Act or Acts of Parliament, or law or laws to the contrary notwithstanding."

Then there follows a proviso in practically the same terms as that set out above in sect. 20 of the War Department Stores Act, 1867 (above, p. 31), reserving the prerogative of the Crown to the said principal Officers in such suits, and preserving the Crown's right to proceed by prerogative process.

Instances of such actions brought by the Ordnance Officers will be found in *Ordnance Officers v. North Leith* (1825), 4 S. 89, an action concluding to have it declared that a fort was not liable to be assessed to the poor's rate, and in *Ordnance Officers v. Edinburgh Magistrates* (1859), 22 D. 219, in which it was held that the Officers had a good title to sue a declarator of right of property in subjects contiguous to a fortress vested in them for behoof of the Crown.

By the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117), s. 1, all powers, authorities, rights and privileges were transferred from the Ordnance Officers to the Secretary of State for War. By sect. 2, all lands, &c. vested in the Officers were also transferred to him, and by sect. 3, "All proceedings whatsoever which have been, or might or may have been commenced, taken or done in the names of the said principal Officers on behalf of Her Majesty, shall and may hereafter be commenced, continued, taken and done in the name of such Principal Secretary of State as aforesaid."

It will be observed that the statutory right of action so transferred is a very wide one, and in part overlaps that conferred by the War Department Stores Act, 1867, s. 20. But the right is only a right of the Secretary of State to sue; there is no power to sue the Secretary of State, as there is under the last-mentioned section. Thus, in *Blundell v. R.*, [1905] 1 K. B. 516; 74 L. J. K. B. 91, which was a claim for compensation alleged to be payable for land acquired by the War Office under the Defence Acts, the claimant had to proceed by petition of right, and could not proceed by action against the Secretary of State.

In *Yorkshire Tannery and Boot Manufactory, Ltd. v. Secretary of State for War* (1886), not reported, the plaintiffs discontinued their action on an intimation from the Treasury Solicitor that their right

to bring it would be contested. In *Cowing v. Secretary of State for War* (1877), not reported, the action was dismissed; but it is not clear that it was solely upon the ground that the Secretary of State could not be sued.

In *Earl of Suffolk v. Lewis* (1863), 1 H. & M. 369; 32 L. J. Ch. 232, the Secretary of State was sued by consent.

Ryan v. Earl de Grey and Ripon (1865), 11 Ir. Jur. (N.S.) 236, was an action for the recovery of rent of land vested in the Secretary of State. It was dismissed on the ground that no such action lay, and that a petition of right was the proper remedy.

Doubt has been expressed by high authority whether the remedy by information still survives in cases where an action by the Secretary of State for War is provided for by these sections. The doubt is based on the fact that no reservation as to the prerogative, such as is found in sect. 34 of the Defence Act, 1842, appears in the Ordnance Board Transfer Act, 1855. A question has also been raised whether, assuming the prerogative remedy to survive in the case of suits with respect to lands, which are part of the hereditary domains of the Crown and are only possessed by the Secretary of State for War for limited purposes, it also survives in the case of lands which, ever since their acquisition, have been vested in the Secretary of State for War or his predecessors. In the author's opinion neither of these doubts are well founded. The point, however, has never been decided. The Crown hoped that it would be taken by the defendant in *A.-G. v. Edmonds* (1877), not reported, a suit for damages for injury done to a landing stage at Woolwich Arsenal, but it was not taken.

There are a large number of reported cases, some fifteen in all, and many which have not been reported, with respect to the acquisition of land compulsorily or by agreement, and matters connected therewith, in which the Secretary of State for War has appeared as a party. They do not in general require special notice here, inasmuch as the Secretary of State plays the same part as an ordinary purchaser, subject to any special terms of the Acts under which he acquires land. These Acts now, either originally or by amendment, in general embody the provisions of the Lands Clauses Consolidation Acts, with respect to the assessment of compensation (see below, p. 132).

Reference may, however, be made to *E. p. Morshead* (1864), 33 Beav. 254, where it was decided that, where the Secretary of State had paid money into Court for lands taken by him under the Defence Acts, an order might be made for payment out without service of the petition on the Secretary of State.

It is apprehended that the Secretary of State cannot be made

to pay the costs of such a petition; see *E. p. Morshead, ubi supra*, where nothing is said as to costs, and *E. p. Laws* (1847), 1 Ex. 441; 17 L. J. Ex. 126. In *Re Maynard's Trusts* (1861), 30 L. J. Ch. 644, the Secretary of State paid costs; but it appears from the order in *Seton* (ed. 6), p. 2524, that there was a covenant to pay costs. In *In re Harens* (1900), *Seton* (ed. 6), p. 2526, the Secretary of State, who petitioned, paid the respondent's costs.

Miscellaneous Suits.

In *Secretary of State for War v. Chubb* (1880), 43 L. T. 83, the Secretary of State sought to restrain the defendants from constructing certain tramways near Aldershot in alleged contravention of their statutory powers. *Secretary of State for War v. Booth*, [1901] 2 I. R. 692, was an action of ejectment by the Secretary of State. *Secretary of State for War v. Easdale* (1893), 27 I. L. T. R. 70, was an action for damages for breach of contract to make good structural defects in certain buildings demised by the defendant to the plaintiff. The defendant sought to counterclaim for damages for breach of a covenant to repair, and it was held that, as the plaintiff was entitled to the prerogative of the Crown in the action, the defendant could not counterclaim, but must proceed by petition of right. A counterclaim would, however, presumably be permitted in an action by the Secretary of State under sect. 20 of the War Department Stores Act, 1867, since that section allows the Secretary of State to be sued as well as to sue.

O'Grady v. Cardwell (1873), 20 W. R. 342; 21 W. R. 340, was an action against the Secretary of State for War for damages for breach of a contract to paint certain barracks. It was held that no such action would lie, and it was pointed out that sect. 37 of the Defence Act, 1842 (5 & 6 Vict. c. 94), as applied by the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117), excluded any personal liability of the Secretary of State. The cause of action apparently did not fall within sect. 20 of the War Department Stores Act, 1867.

In Scotland, in *Smith v. L. A.* (1897), 25 R. 112, proceedings against the Lord Advocate, as representing the Crown and, in particular, the War Office, it was held that the War Office was not liable for damages on account of any wrongful acts or illegal proceedings of a court-martial.

In *Gidley v. Lord Palmerston* (1822), 3 B. & B. 275, the Secretary at War was sued for a retired allowance by a retired War Office clerk. It was held that the action was brought against the defendant in his public and official character only, there being no express undertaking or agreement between him and the plaintiff, that the defendant was responsible to the Crown only for the proper dis-

posal of the money received by him, and that no action could lie against him for non-payment of such money. See further below, p. 643.

Felkin v. Lord Herbert (1861), 1 Dr. & Sm. 608; 30 L. J. Ch. 604, was an action by a local board for an injunction to restrain the Secretary of State for War from stopping up a ditch. The defendant appeared under protest, submitting that the proceedings should have been by petition of right, but it was held that he, like any other subject, must appear and raise any question of jurisdiction after appearance.

The injunction was finally refused on the ground that the public good did not require its issue (4 L. T. 433; 9 W. R. 496), but by that time, in this most unsatisfactory case, the names of two successors of the original defendant had been substituted for him, and the ditch had acquired the *sobriquet* of "Chancery ditch."

In consequence of the last case, in *Cowing v. Secretary of State for War* (1877), not reported, the Secretary of State appeared and demurred, with success.

Dickson v. Viscount Combermere (1863), 3 F. & F. 527, was an action against an ex-Secretary of State for War and others for causing, by means of false charges, the removal of the plaintiff from the office of lieutenant-colonel of a regiment. It was held by Cockburn, C.J., that, as regards the Secretary of State, the action would not lie against him unless he had acted dishonestly, and he doubted whether he would be liable in any action in such a case.

A form of defence by the Secretary of State in an action against him for trespass will be found below, p. 136.

Hawley v. Steele (1877), 6 Ch. D. 521; 46 L. J. Ch. 782, was an action to restrain the general in command of the troops at Aldershot from causing or permitting rifle practice, alleged to be a nuisance to the plaintiff, on land acquired under the Defence Act, 1842. Jessel, M.R., held that the Secretary of State was a necessary party, as the land was vested in him, though he gave no decision as to his liability to be sued in a case of that kind. He refused the injunction on the ground that land so acquired could be used for all reasonable military purposes. The Secretary of State for War would not, it is submitted, be liable except for acts directly authorised by himself; see the discussion below, p. 641. The question might have been settled in *Pain v. Secretary of State for War* (1900), not reported, where it was sought to restrain the Secretary of State from permitting trespass on the plaintiff's property, but the matter never came to trial.

No such questions would arise in the case of land belonging to and used by a volunteer corps, as in *Banister v. Bigge* (1865), 34 Beav. 287; and *Fergusson v. Pollok* (1901), 3 F. 1140.

The Admiralty.

General Observations.

The office of Lord High Admiral is now in commission and is likely to remain there, but reference may be made here to some reported suits to which he was a party, in respects of his droits, namely, *Seigneur Admiral v. Linsted* (1664), 1 Sid. 178; *s. n. Duke of York v. Linstred*, 1 Keb. 657; and *Score v. Lord Admiral* (1709), Park. 273.

Proceedings in Admiralty in which the Crown participates are dealt with below, p. 509.

The official title of the Board of Admiralty is "the Commissioners for executing the office of Lord High Admiral of the United Kingdom." (Interpretation Act, 1887 (52 & 53 Vict. c. 63), s. 12 (4).)

In *Priddy v. Rose* (1817), 3 Mer. 86, a bill was filed against the Treasurer of the Navy, certain trustees and the Attorney-General, praying an account of what was due on certain annuities and arrears of pensions, and for an injunction to restrain the Treasurer and the trustees from paying away money coming to their hands. The bill was dismissed against the Treasurer and the Attorney-General, Sir W. Grant, M.R., saying: "Where a public officer has in his hands money raised by the Government for the use of an individual, it is clear that a suit may be maintained against the officer for the recovery of such money. For it is his duty towards the Crown, as well as towards the individual, to apply the money to its destined purpose. But here the officer is commanded by the Government to withhold the money from Mr. Hunt, and to apply it towards satisfaction of a debt which Mr. Hunt owes the public. Then the question is between Government and Mr. Hunt, or Mr. Hunt's assignee; and it is not, I apprehend, in this Court that such a question can be decided."

Some of these statements are criticised below, p. 644.

An attempt was made in *Raleigh v. Goschen*, [1898] 1 Ch. 73; 67 L. J. Ch. 59, to sue the Lords Commissioners of the Admiralty and the Director of Naval Works in their official capacity for damages for alleged trespass. It was held that they were not officially liable, and that they or any of them were only liable if they had in fact committed or authorised the trespass. The case is more fully discussed below, p. 642, and the defence is printed at p. 137.

In certain cases, however, suits or proceedings may be brought by or against the Admiralty, and these will now be discussed.

Suits as to Lands.

By the Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57), s. 11, "The Admiralty may bring or defend any action or suit relative to any lands contracted to be purchased or taken by them under this Act, or under any special Act," whereby compulsory powers of purchasing or taking lands are given to them, "of the present or any future session; and may bring any action of ejectment or other action or suit for recovering possession of any lands purchased or taken by them under this Act or under any such special Act . . . and may distrain or sue for any arrears of rent due to them in respect thereof; and may bring any action or suit in respect of any trespass or encroachment committed thereon or damage done thereto, or any other action or suit in respect thereof, and may defend any action or suit in respect thereof; and in every such action or suit the Admiralty may be styled 'The Lord High Admiral of the United Kingdom,' or 'The Commissioners for executing the Office of Lord High Admiral of the United Kingdom' (as the case may require), without more; and any such action or suit shall not be affected by any change in the Admiralty; and in any such action or suit the Admiralty shall be liable and entitled to pay or receive costs according to the ordinary rules observed in actions between subject and subject." By sect. 26 of the same Act, "the provisions of this Act respecting actions and suits by and against the Admiralty relative to lands shall apply in relation to all lands for the time being purchased or taken or contracted to be purchased or taken by the Admiralty under any general or special Act in force at the passing of this Act." The Defence Act Amendment Act, 1864 (27 & 28 Vict. c. 89), s. 4, extends these provisions to lands vested in the Admiralty under that Act.

By the Admiralty Powers, &c. Act, 1865 (28 & 29 Vict. c. 124), s. 1, the above provisions of the Admiralty Lands and Works Act, 1864, are applied in relation to all lands for the time being vested in or purchased by the Admiralty. By sect. 2, "Except as is otherwise expressly provided, the Commissioners of the Admiralty for the time being may be styled, in any action, suit, or other proceeding at law or in equity, 'The Commissioners for executing the Office of Lord High Admiral of the United Kingdom,' without more; and any action, suit or proceeding shall not be affected by any change among the Commissioners of the Admiralty; and in any action, suit or proceeding the Commissioners of the Admiralty shall be liable and entitled to pay and receive costs according to the ordinary law and practice relative to costs."

By sect. 3, "Nothing in this Act or in the Admiralty Lands and Works Act, 1864, shall take away or abridge in any action or suit the legal rights, privileges and prerogatives of Her Majesty, her heirs and successors, but in all actions and suits instituted by or against the Commissioners of the Admiralty, and in all proceedings and matters connected therewith, the Commissioners of the Admiralty may exercise and enjoy all such rights, privileges and prerogatives as are for the time being exercised and enjoyed in any action or suit in any Court of law or equity by Her Majesty, her heirs and successors, as if the Crown were actually a party to such action or suit."

By sect. 4, "Notwithstanding anything in this Act or in the Admiralty Lands and Works Act, 1864, it shall be lawful for Her Majesty, her heirs and successors, to proceed by information in the Court of Exchequer [Revenue side of the King's Bench Division], or by any other Crown process, legal or equitable, in any case in which it would have been competent for Her Majesty, her heirs or successors, so to proceed if no provisions respecting procedure had been inserted in this Act, or in the Admiralty Lands and Works Act, 1864."

It is to be noted that, for some reason best known to the Legislature, the Admiralty may both sue and be sued in respect of lands and may pay or receive costs, whereas the Secretary of State for War may sue but cannot be sued in respect of lands, and neither pays nor receives costs.

As to the meaning of the words "may defend," see the observations on p. 32, above.

Suits as to Naval Stores, or any other Rights, Duties, or Property of the Admiralty.

By the Admiralty Suits Act, 1868 (31 & 32 Vict. c. 78), s. 3, "The Admiralty may institute any action, suit or proceeding concerning naval or victualling stores, or other Her Majesty's stores, goods, or chattels under the charge or control of the Admiralty, or any stores, goods or chattels sold or contracted to be delivered to or by the Admiralty for the use or on account of Her Majesty, or the price to be paid for the same, or any loss or injury of or to any such stores, goods or chattels as aforesaid, or concerning any contract with the Admiralty relative to the execution of any work, or the doing of any thing, or concerning any matter arising under or in relation to any such contract, or concerning any periodical or other payment or due payable to the Admiralty, or concerning any debt, damages, claim, demand, or cause of action or suit whatever arising out of any matter in anywise relating to the rights, powers or duties of the Admiralty, or to property vested in or purchased by or being under

the management or control of the Admiralty, in like manner and form (as nearly as may be) as if the question in dispute were one between subject and subject."

Sect. 4: "In any such action, suit or proceeding the Admiralty may be styled 'the Lord High Admiral of the United Kingdom,' or 'the Commissioners for executing the Office of Lord High Admiral of the United Kingdom' (as the case requires), without more; and any such action, suit or proceeding shall not be affected by any change in the Admiralty."

Sect. 5: "In any such action, suit or proceeding the Admiralty shall be liable and entitled to pay or receive costs according to the ordinary law and practice relative to costs."

Sects. 6 and 7 reserve the rights and prerogatives of the Crown in substantially the same words as sects. 3 and 4 of the Admiralty Powers, &c. Act, 1865, already cited.

This Act is wide enough to include almost any cause of action, but under it the Admiralty can only sue; they cannot be sued. The subject's remedy, then, except, perhaps, in actions in respect of lands under the Acts of 1864 and 1865 (above, p. 38), is by petition of right; see, for instance, *Yeoman v. R.*, [1904] 2 K. B. 429; 73 L. J. K. B. 904; *Stewards & Co., Ltd. v. R.* (1901), 16 T. L. R. 153; 17 T. L. R. 111, reported as *A.-G. v. Stewards & Co., Ltd.* in the House of Lords, 18 T. L. R. 131; and *Churchward v. R.* (1865), 1 L. R. 1 Q. B. 173.

In *Williams v. Lords Commrs. of the Admiralty* (1851), 11 C. B. 420; 20 L. J. C. P. 245, it was held that service on one of the Commissioners of process in an action brought against them under statutes superseded by, but similar in terms to, those cited above was not sufficient. *Semble*, as the Commissioners are not a corporation, process ought to be served by delivery of a copy to each of them. This latter statement is somewhat surprising. One would have thought that under the terms of the Act service could be effected on the Commissioners in a body, as such, and in practice, presumably, the Treasury Solicitor would always accept service for them as a body.

In *The Zoe* (1886), 11 P. D. 72; 55 L. J. P. 52, the Admiralty moved that they might be allowed to come in and enter their claim, in respect of the loss of certain goods of the Crown, against a fund paid into Court by the owners of a ship in order to limit their liability. It was held that they had the right to do so, both by the general law and also under the Admiralty Suits Act, 1868. *Quere*, whether they were bound to come in and claim or not.

Lords Commrs. of the Admiralty v. McGregor, Gow & Co. (1885), 1 T. L. R. 679, was an action for damages for loss of Admiralty stores, alleged to have been caused by negligent navigation.

In *Lords Commrs. of the Admiralty v. Dick & Page* (1907), not reported, the Admiralty recovered damages in the City of London Court for the loss of the whale boat and gear of a King's ship, caused by the negligent navigation of the defendants' vessel.

In *The Etna* (1907), 24 T. L. R. 270, and other cases, they sued for damages by collision.

Suits with respect to Prize and Booty of War.

As to the participation of the Admiralty in proceedings relating to the distribution or investment of prize-money, and the remuneration of ships' agents under the Naval Prize Act, 1864 (27 & 28 Vict. c. 25), and with regard to the pre-emption of goods for the service of the Crown, see below, p. 514.

Suits with respect to Greenwich Hospital.

By the Greenwich Hospital Act, 1865 (28 & 29 Vict. c. 89), ss. 52—54, it is provided that the Admiralty may sue and be sued in respect of the lands of Greenwich Hospital in terms practically identical with those of the Admiralty Powers, &c. Act, 1865, which are set out above, p. 38.

By sects. 55, 56, all the debts and obligations of the Commissioners of Greenwich Hospital (whom the Act abolishes) are to be enforceable against the Admiralty, and all actions, suits or proceedings against the Commissioners may be continued or instituted against the Admiralty.

For an action brought by the Commissioners of Greenwich Hospital before the above Act, see *Commrs. of Greenwich Hospital v. Blackett* (1848), 12 Jur. 151.

The Board of Trade.

Constitution.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (8), the Board of Trade means "the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations." The Civil List and Secret Service Money Act, 1782 (22 Geo. III. c. 82), s. 15, provides that the duty and business done by the late Commissioners of Trade and Plantations, and all authorities, powers and jurisdictions given them by any Act shall be held and exercised by any Committee or Committees of His Majesty's Privy Council, which His Majesty shall be pleased to direct and appoint, during his royal pleasure,

without any salaries, fees, or pensions. By an Order in Council of August 23rd, 1786, a Committee was constituted of a rather incongruous group of high officials and their successors, of all the Irish Privy Councillors, and of certain other members by name. Apparently the Committee now consists of the successors of the said high officials.

The Board of Trade (President) Act, 1826 (7 Geo. IV. c. 32) provides for the grant of a salary to the President of the Committee. The Harbours and Passing Tolls, &c. Act, 1861 (24 & 25 Vict. c. 47), s. 2, gives statutory sanction for the first time to the expression "Board of Trade." By sect. 65, the Lords of the Committee may be described in all Acts, deeds, contracts and other instruments by the official title of "The Board of Trade," without expressing their names, and all Acts, contracts, deeds and other instruments wherein they are so described shall be as valid as if the said lords or any of them had been named therein. By sect. 66, all lands and hereditaments taken or to be taken for their use are to vest in the persons constituting the Board of Trade in perpetual succession, and sects. 68, 69 provide for the sale and purchase of lands by them. By sect. 67, any deed, contract or other instrument to be executed by them or on their behalf shall be valid if under the seal of the Board of Trade and signed by the President or Vice-President [now the Parliamentary Secretary, by the Board of Trade (Parliamentary Secretary) Act, 1867 (30 & 31 Vict. c. 72), s. 1], or, if there be no such officers, by any one of Her Majesty's Principal Secretaries of State.

Proceedings under the Merchant Shipping Acts, 1894 and 1906.

General provision.—By sect. 717 of the Act of 1894 (57 & 58 Vict. c. 60) the Board may take any legal proceedings under the Act in the name of any of their officers.

Wages of Seamen lost with their Ship.—These are recoverable by the Board from the owner of the ship, by sect. 174 of the Act of 1894, in the same Court and in the same manner in which seamen's wages are recoverable, and they are to deal with them in the same manner as with the wages of other deceased seamen and apprentices, *i.e.*, in accordance with sects. 176 to 180 of the Act. The recovery of wages is governed by sects. 164—167. See *Board of Trade v. Baxter*, [1907] A. C. 373 ; 76 L. J. P. 147, a case under these sections, in which the Board intervened as a party. Sect. 29 of the Act of 1906 (6 Edw. VII. c. 48) extends the provisions of Part II. of the Act of 1894, which includes the above provisions, to seamen belonging to a British ship registered in the United Kingdom, the voyage of which is to terminate out of the United Kingdom.

Relief and Repatriation of Distressed Seamen and Seamen left behind Abroad.—(a) The Merchant Shipping Act, 1906, s. 28—(1) gives the master of a ship power to appeal to a Court of summary jurisdiction from the decision of the proper officer (defined in sub-sect. 11), as to the amount to be allowed him for reimbursements out of the wages or effects of a seaman left behind abroad (sub-sect. 3); (2) provides that the Board of Trade shall be under no liability with respect to anything done under the section, except that if, after the wages and effects of a seaman have been dealt with under the section, any legal proceedings are taken in respect of those wages or effects, or involving the forfeiture of those wages or effects, or of any sum out of the wages, by the seaman against the master or owner of the ship or *vice versa*, the Board shall, if notice is given to them of the proceedings, and a reasonable opportunity afforded them of appearing, comply with any order of the Court as respects the wages or effects, so far as they can do so out of the wages and effects remitted to them in respect of the voyage of the ship, and so far as those wages and effects are not required for reimbursing any expenses incurred by or on behalf of the Crown, or incurred by the Government of a foreign country and repaid to that Government by or on behalf of the Crown, as expenses of a distressed seaman on behalf of the seaman (sub-sect. 8).

The Board is entitled to appear and be heard in any such proceedings by any of their officers, and for the purpose of the section notice to any superintendent shall be deemed to be notice to the Board (sub-sect. 8).

The section also provides that the Board may meet any claim made by a seaman against a master or owner in respect of any wages or effects dealt with under the section, although legal proceedings are not actually taken in respect thereof, provided that they have given notice to the master or owner, and he has not given written notice of objection within ten days (sub-sect. 8).

Any legal proceedings taken or claim made by a person in whose favour an allotment note has been made, or who claims reimbursement of expenses on behalf of any union or parish under sect. 182 of the Act of 1894, are to be treated as proceedings taken or a claim made by a seaman (sub-sect. 8).

Any sums remitted or arising from the sale of effects under the section shall be paid into the Exchequer, and any sums payable by the Board under the section shall be paid out of moneys provided by Parliament (sub-sect. 9).

(b) The expenses of the maintenance and return to a proper return port of a seaman belonging to a British ship, whose service terminates at a port out of His Majesty's dominions otherwise than by the con-

sent of the seaman to be discharged during the currency of the agreement, shall, by sect. 32, if defrayed by the proper authority, as defined in sect. 49, or by any other person except the seaman himself (unless the seaman has been guilty of barratry), be a charge upon the ship to which the seaman belonged, and may also be recovered against the person who is the owner of the ship for the time being, or, where the ship has been lost, against the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either against the owner for the time being or against the person who was the owner of the ship at the time of the transfer, at the suit of the proper authority or other person defraying the expenses, or, in case they have been allowed to such authority or person out of public money, as a debt to the Crown, either by ordinary process of law or in the Court and in the manner in which wages may be recovered by seamen, *i.e.*, under sects. 164—167 of the Act of 1894. The section does not apply in the case of a foreign seaman who has been shipped at a port out of the United Kingdom and discharged at a port out of the United Kingdom.

Sect. 33 applies the provisions of sect. 32 to seamen discharged when a British ship is transferred or disposed of at any port out of His Majesty's dominions, including foreign seamen, whether they have been shipped at a port in the United Kingdom or not.

(c) Expenses of medical attendance and maintenance in case of the illness of or injury to a master or seaman till he is cured or dies or is returned to a proper return port, and of his conveyance to such port, and in case of death the expenses (if any) of his burial shall, by sects. 34, 35, if paid by any authority on behalf of the Crown, be recoverable in manner provided by sect. 32, above. In any proceeding for such recovery, a certificate of the facts signed by such authority, together with such vouchers (if any) as the case requires, shall be sufficient proof that such expenses were duly paid by that authority.

The proper method of recovering expenses expressed to be recoverable as a debt to the Crown is by information by the Attorney-General. Where a seaman had become ill from the effects of bad food on shipboard, it was held that the Board of Trade had no right to deduct from his wages expenses incurred by them on his behalf. (*Secretary of the Board of Trade v. Sundholm* (1879), 41 L. T. 469.) But see now the wide terms of sect. 34.

(d) If any expenses on account of any distressed seaman (other than excepted expenses as defined below), either for his maintenance, necessary clothing, conveyance to a proper return port, or, in case of death, for his burial, or otherwise in accordance with the Act, are

incurred by or on behalf of the Crown, or are incurred by the Government of a foreign country, and repaid to that Government by or on behalf of the Crown, those expenses, by sect. 42, together with the wages, if any, due to the seaman, shall be a charge upon the ship, whether British or foreign, to which such seaman belonged, and shall be a debt to the Crown from the master of the ship, or from the owner of the ship for the time being, or from the other persons mentioned in sect. 32 (above, pp. 43, 44), and also, if the ship be a foreign ship, from the person, whether principal or agent, who engaged the seaman for service in the ship.

The debt, in addition to any fines which may have been incurred, may be recovered by the Board of Trade on behalf of the Crown, either by ordinary process of law, or in the Court and manner in which wages may be recovered by seamen under sects. 164—167 of the Act of 1894. In any proceeding for such recovery the production of the account (if any) of the expenses furnished in accordance with the Act or the distressed seamen regulations made by the Board under sect. 40 of the Act, and proof of payment of the expenses by or on behalf of the Board of Trade shall be *prima facie* evidence that the expenses were incurred or repaid under the Act by or on behalf of the Crown.

Excepted expenses for the purposes of the section are expenses incurred in cases where the certificate of the proper authority obtained on leaving a seaman behind states, or the Board of Trade is otherwise satisfied, that the cause of the seaman being left behind was desertion, or disappearance, or imprisonment for misconduct, or discharge from his ship by a naval Court on the ground of misconduct, and expenses incurred on account of the return to a proper return port of a distressed seaman who has been discharged at the port at which he was shipped, or at some neighbouring port. See further, as to the expenses of distressed seamen, sect. 46 (4).

Board of Trade v. Sailing Ship Glenpark, Ltd., [1903] 2 K. B. 324; [1904] 1 K. B. 682; 72 L. J. K. B. 697; 73 L. J. K. B. 315, was an action brought by the Board under the repealed sect. 193 of the Act of 1894 to recover expenses incurred in maintaining and providing with a passage home seamen shipwrecked abroad. It was held that under the circumstances the seamen were "distressed." It was also held in the Court of first instance that the production of the account of the expenses, and proof of payment of that account by or on behalf of the Board, were made, by the section, conclusive evidence of the Board's right to recover. The Court of Appeal declined to express an opinion on this, but held that the production of the

account and proof of payment were conclusive in the absence of any evidence to the contrary. In the section now in force the words "*prima facie* evidence" have been substituted for the words "sufficient evidence," which appeared in the repealed section.

Expenses of conveying Wrecked Passengers and forwarding Passengers.

—By sect. 334 of the Act of 1894, all expenses incurred under Part III. of the Act by or by the authority of a Secretary of State, Governor of a British possession, or consular officer in respect of a wrecked passenger, or the forwarding of a passenger to his destination, including the cost of maintaining the passenger until forwarded to his destination, and of all necessary bedding, provisions and stores, shall be a joint and several debt to the Crown from the owner, charterer and master of the ship on board of which the passenger had embarked. A certificate purporting to be under the hand of a Secretary of State, Governor or consular officer, and stating the circumstances of the case, and the total amount of the expenses, shall be admissible in evidence in accordance with sect. 695 of the Act, and shall be sufficient evidence of the amount of the expenses, and of the fact that the same were duly incurred, unless the defendant specially pleads and duly proves that the certificate is false and fraudulent, or that the expenses were not duly incurred under the Act.

The sum recovered shall not exceed twice the total amount of passage money which the owner, charterer or master proves to have been received by him or on his account, or to be due to and recoverable by him or on his account, in respect of the whole number of passengers who embarked in the ship.

By sect. 357 the sums so recoverable may be sued for and recovered before a Court of summary jurisdiction by any person entitled thereto, or by any of the officers mentioned in sect. 356 (including, in the British Islands, any person authorised by the Board of Trade) on behalf of any one or more of such persons, and in any case either by one or several proceedings.

Costs and Damages for Unreasonable Detention of Ship.—By sect. 460 of the Act of 1894—(a) if it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship under Part V. of the Act as an unsafe ship, the Board of Trade shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

(b) If a ship is finally detained under the Act, or if it appears that a ship provisionally detained was, at the time of that detention, an

unsafe ship within the meaning of Part V. of the Act, the owner shall be liable to pay to the Board their costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable under sects. 547—556 of the Act.

(c) For the purpose of the section the costs of and incidental to any proceeding before a Court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Board of Trade, shall be part of the costs of the detention and survey of the ship, and any dispute as to the amount of those costs may be referred in England or Ireland to one of the masters or registrars of the High Court (the Probate, Divorce, and Admiralty Division, by the R. S. C. (Merchant Shipping), 1894), and in Scotland to the Auditor of the Court of Session, and such officer shall, on request by the Board, ascertain and certify the proper amount of those costs.

(d) An action for any costs or compensation payable by the Board under the section may be brought against the Secretary of the Board by his official title as if he were a corporation sole, and if the cause of action arises in Ireland, and the action is brought in the High Court, that Court may order that the summons or writ may be served on the Crown and Treasury Solicitor for Ireland in such manner and on such terms respecting extension of time and otherwise as the Court thinks fit, and that that service shall be sufficient service of the summons or writ upon the Secretary of the Board.

By sect. 461, where the ship has been detained in consequence of a complaint, and the circumstances are such that the Board are liable under the Act to pay the owner any costs or compensation, the complainant shall be liable to pay the Board all such costs and compensation as the Board incur or are liable to pay in respect of the detention and survey of the ship.

Sect. 462, as amended by sect. 2 of the Act of 1906, applies these provisions to the detention of foreign ships.

Under the original enactment in the Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), ss. 12, 13, the owner must have proceeded by petition of right, since the Act provided no direct process against the Board of Trade. In *Lewis v. Gray* (1876), 1 C. P. D. 452; 45 L. J. C. P. 720, the difficulty was overcome by arrangement, the owner being permitted to sue the Assistant Secretary of the Marine Department of the Board.

In the Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), s. 10, the present provision made its first appearance. *Thompson v. Farrer* (1882), 9 Q. B. D. 372; 51 L. J. Q. B. 534, was an action brought against the Secretary of the Board in pursuance of this provision, and

this case was followed by *Dixon v. Farrer* (1886), 18 Q. B. D. 43 ; 56 L. J. Q. B. 53, where it was held that such a case was within sect. 46 of the Crown Suits, &c. Act, 1865 (28 & 29 Vict. c. 104), and therefore the Attorney-General was entitled to demand as of right a trial at bar, and on his waiving his right the Court was bound to change the venue to any county wherein he elected to have the action tried. See the discussion of this matter below, p. 582.

The same case is reported on the facts, *s.n.* *Dixon v. Secretary of the Board of Trade* (1887), 3 T. L. R. 478. A subsequent case was *Dixon v. Calcraft*, [1892] 1 Q. B. 458 ; 61 L. J. Q. B. 529.

A precedent of the pleadings in an action of this kind will be found below, p. 139.

Appeals with respect to the Cancellation or Suspension of the Certificate of a Master, Mate, or Engineer.—These are scarcely civil proceedings which fall within the scope of this chapter or this work, although in the case of such appeals in Scottish Courts the Board of Trade figure as respondents in the title of the appeal, and although they do in fact in all such appeals play the part of respondents. Their functions in the matter, under the General Rules for Formal Investigations as to Shipping Casualties, 1895, are discussed in the recent case of *The Carlisle*, [1906] P. 301 ; 75 L. J. P. 97, where the costs of a successful appeal by a master were awarded against them, on the ground that they ought to have assisted the magistrate who was holding the formal investigation by intimating whether in their opinion the certificate, on the evidence, ought to be dealt with or not. Sect. 66 of the Merchant Shipping Act, 1906, extends the right of appeal from decisions given on investigations as to shipping casualties under Part VI. of the Act of 1894.

Certain Proceedings in Scotland.—*William Denny & Brothers v. Board of Trade* (1880), 7 R. 1019, a suit in which, in fact, the Lord Advocate, on behalf of the Board, and the Board's surveyor were the defenders, was an action for a declaration that the Board had exceeded their powers in giving certain instructions to their surveyors as to surveys of passenger steamers under the (now repealed) Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104). It was held that the (now repealed) Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), ss. 14, 15, provided a remedy by appeal to a Court of survey or scientific referees, and that the jurisdiction of the Court of Session was excluded. Otherwise, *semble*, the Court would have been ready to interfere.

L. A. v. Clyde Steam Navigation Co. (1875), L. R. 2 H. L. Sc. 409, was a suit instituted by the Lord Advocate on behalf of the Board of Trade and the Commissioners of Customs to have it

declared that the tonnage of the respondents' steamship was erroneously computed at an amount under the proper tonnage thereof as ascertained by the official surveyor.

Board of Trade v. Leith Local Marine Board (1896), 24 R. 177, was a decision on a special case presented by the Lord Advocate on behalf of the Board of Trade and the secretary of the respondents as to the powers of the Board of Trade and the respondents in respect of the cancellation and suspension of certificates.

Granfelt & Co. v. L. A. (1874), 1 R. 782, was a note of suspension and interdict brought against the Board of Trade praying to have the proceedings of the Board suspended, on the ground that the ship detained by them was not a British ship. No objection seems to have been taken to the form of the proceedings, which, however, failed on the facts of the case.

Proceedings under the Tramways Act, 1870.

In *In re Pontypridd and Rhondda Valleys Tramways Co., Ltd.* (1889), 58 L. J. Ch. 536, it was sought to restrain an inquiry by the Board under sect. 42 of the Tramways Act, 1870 (33 & 34 Vict. c. 78). The Court, in dismissing the motion on other grounds, expressed the opinion that it had no power to restrain the Board from prosecuting an inquiry which the Legislature said that, under certain circumstances, they might institute. This would appear to be the case, as far as proceedings in Chancery are concerned, but probably a prohibition would issue in a proper case to the Board to prevent them from holding an inquiry, if in so doing they were acting in a judicial capacity. (See below, p. 123.)

Proceedings in Bankruptcy.

The Board of Trade occupy an administrative position under the law of bankruptcy, by virtue of which they and their officers, the official receivers, may be parties to legal proceedings with respect to bankrupt estates. See, in particular, as to appeals by and from the Board of Trade, the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 21 (3), 82 (1), 86 (2), 104, 139, 162 (4), and Bankruptcy Rules 6, 202, 237, 299. As to applications to the Court by official receivers, see Bankruptcy Rules 332—334; as to appeals by and from official receivers, the Bankruptcy Act, 1883, ss. 104, 139. The enforcement by the Court of orders or directions of the Board or of an official receiver or other officer of the Board, on application by the Board, or official receiver or other authorised person, is provided for by sect. 102 of the Bankruptcy Act, 1883.

The Local Government Board.

This Board was constituted by the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), s. 1, and all the duties of the Poor Law Board, and also the duties of the Secretary of State and the Privy Council set forth in the Schedule to the Act, were transferred to them, subject to the same conditions, liabilities and incidents as attached to the former authorities. By sect. 3 the Board is to consist of certain high officials, and by sect. 5 they may adopt an official seal, and describe themselves generally by the style and title of "The Local Government Board."

There appears to be no statutory power by which they can sue or be sued except in the Housing of the Working Classes Act, 1903 (3 Edw. VII. c. 39), s. 3, and Sched. (9), whereunder by action in the High Court they may recover penalties from undertakers who enter on any working men's dwellings in contravention of the Schedule or of any conditions imposed by the Board. The administrative county of London is excluded from the operation of this provision by sect. 16 of the Act. A similar provision used to be inserted in private Acts, *e.g.*, the London and North Western Railway Act, 1900 (63 & 64 Vict. c. cxxv.), s. 50. A failure to make a return to the Board under the Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), s. 2, is punishable by a penalty not exceeding 20*l.*, recoverable by action on behalf of Her Majesty in the High Court; that is to say, apparently, by an information by the Attorney-General and not by action on the part of the Board. Fines under the Alkali, &c. Works Regulation Act, 1906 (6 Edw. VII. c. 14), are, by sects. 17 and 27, recoverable by action in the County Court brought with the sanction of the Board by the chief or some other inspector appointed for the purpose by the Board, and are to be deemed debts due to such inspector. Various other provisions as to procedure are contained in sects. 17, 18.

Donahoo v. Local Government Board (1882), 46 L. T. 300, reported as *Donahoo v. Dodson*, 30 W. R. 334, was a motion to restrain the Board from issuing an order dismissing a medical officer of a poor law union, on the ground that they had not heard him in his defence as he alleged they were bound by statute to do. No objection seems to have been taken to the form of the proceedings.

The Local Government Board for Scotland.

This Board was established by the Local Government (Scotland) Act, 1894 (57 & 58 Vict. c. 58), ss. 3—7, and consists of certain

officials and three appointed members, with an official seal, and the style and title of "The Local Government Board for Scotland." They superseded the Board of Supervision, established by the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83). There appears to be no general statutory power to the Board to sue or to be sued.

By the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101), s. 97, the Board of Supervision, now succeeded by the Local Government Board; in case any local authority refuses or neglects to do what is required of it, or in case any obstruction arises in the execution of the Act, may, with the approval of the Lord Advocate, apply by summary petition to either Division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, and the Court may make such order and dispose of the expenses as it deems just. For instances of proceedings under this section, see *Board of Supervision v. Local Authority of Lochmaben* (1893), 20 R. 434, and *Local Government Board for Scotland v. Elgin County Council* (1897), 24 R. 513. A similar provision is to be found as to defaults of parochial boards (now parish councils) in the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 83), s. 87.

The Local Government Board for Ireland.

This body was established by the Local Government Board (Ireland) Act, 1872 (35 & 36 Vict. c. 69), ss. 2—4, to supersede the Poor Law Commission and to take over the other powers and duties scheduled to the Act, subject to the same conditions, liabilities and incidents as those under which they were exercised by the previous authorities. The Board is to consist of two officials, together with a vice-president and two appointed members, is to have an official seal, and is to be described as "The Local Government Board for Ireland."

The Board, it appears, cannot sue or be sued.

Penalties in connection with the taking of houses of the labouring class may be recovered by the Board by action in the High Court under provisions similar to those referred to above, p. 50, which are inserted, where appropriate, in private Acts relating to Ireland; see, for instance, the Mullingar, Kells and Drogheda Railway Act, 1904 (4 Edw. VII. c. lxxviii.), s. 19.

Fines under the Alkali, &c. Works Regulation Act, 1906 (6 Edw. VII. c. 14), are recoverable in Ireland with the sanction of the Board by sects. 17 and 27. (See above, p. 50.)

The Postmaster-General.

Constitution.

By the Post Office (Management) Act, 1837 (7 Will. IV. & 1 Vict. c. 33), s. 2, "Her Majesty's present Postmaster-General and the person or persons to be from time to time hereafter appointed by the Queen's Majesty by letters patent under the Great Seal of Great Britain, shall be the master of the Post Office by the style of Her Majesty's Postmaster-General," and he is given the exclusive privilege of conveying letters with certain specified exceptions.

By the Post Office (Duties) Act, 1840 (3 & 4 Vict. c. 96), s. 67, "to enable the Postmaster-General for the time being to hold and take conveyances and leases of messuages, tenements, lands and hereditaments for the service of the Post Office, and to transmit the same to his successors, be it enacted that for such purpose Her Majesty's Postmaster-General and his successors shall be and is and are hereby made a body corporate, and shall have a seal," and all lands, &c. are thereby vested in him in his corporate capacity.

The Post Office Lands Act, 1863 (26 & 27 Vict. c. 43), s. 6, transfers to and vests in any person appointed Postmaster-General the benefit of all contracts, bonds, securities and things in action which were vested in his predecessor at the time he ceased to hold office.

It is the duty of the Postmaster-General to see to the recovery of balances due to the Crown from officers employed under him. (Public Accountants Act, 1800 (39 & 40 Geo. III. c. 54), s. 12.)

Proceedings with respect to the Post Office.

By the Post Office (Offences) Act, 1837 (7 Will. IV. & 1 Vict. c. 36), s. 43, any sum not exceeding 20*l.* due for postage from any person, or due for postage from any deputy, agent, or letter-carrier, or any other person employed in receiving or collecting the postage of letters or any of the Post Office revenue, or from the sureties of such last-mentioned person, may be recovered summarily. In Ireland the sum recoverable summarily is a sum not exceeding 50*l.* By sect. 44, all duties of postage granted by any of the Post Office Acts and charged by virtue thereof, may be sued for and recovered by suit, action or information in any Court of Record in the name and on behalf of Her Majesty, with costs, in the same way as other duties under Revenue Acts.

The Post Office (Duties) Act, 1840 (3 & 4 Vict. c. 96), s. 60, the Post Office (Duties) Act, 1847 (10 & 11 Vict. c. 85), ss. 12—14, and

the Post Office Act, 1875 (38 & 39 Vict. c. 22), s. 8, provide for the recovery of the postage either from the sender or the addressee of any letter or postal packet.

Apart from these enactments, and apart from the proceedings before the Railway and Canal Commission, to which reference is made below, it does not appear that the Postmaster-General has any statutory power to sue or be sued in respect of Post Office matters. His remedy is by information, and the subject's remedy is by petition of right. So we find in *Northam Bridge Co. v. R.* (1887), 55 L. T. 759, a petition of right claiming a declaration that the servants and contractors of the Postmaster-General were liable to pay tolls for using the suppliant company's bridge and roads; and in *Clogher Valley Tramway Co., Ltd. v. R.* (1891), 30 L. R. Ir. 316, a petition of right claiming the payment of sums alleged to be due for the conveyance of mails and parcels on a tramway.

In *E. p. Postmaster-General, In re Bonham* (1879), 10 Ch. D. 595; 48 L. J. Bk. 84, the Postmaster-General obtained a writ of extent against debtors in respect of moneys due to him on sales of old stores. In *The Winkfield*, [1902] P. 42; 71 L. J. P. 21, he claimed on behalf of himself and certain colonial Postmasters-General to recover the value of letters, parcels, &c. in his custody as bailee, which had been lost in a collision.

In *Wadham v. Postmaster-General* (1871), L. R. 6 Q. B. 644; 40 L. J. Q. B. 310, and in *Gower v. Postmaster-General* (1887), 57 L. T. 527, the Postmaster-General was defendant in his capacity of lessee of certain Post Office premises, the former action being an action of ejectment on a proviso for re entry for breach of covenant, the latter being proceedings to determine the question whether the Postmaster-General was liable under a covenant to pay taxes and outgoings.

A Post Office employé duly travelling with the mails is entitled to sue for damages for injury caused by the carriers' negligence, although the contract of carriage is between the carriers and the Postmaster-General and not between the carriers and the employé. His right arises from the general obligation to carry safely, and the action is properly brought by him and not by the Postmaster-General. (*Collett v. London & North Western Rail. Co.* (1851), 16 Q. B. 984; 20 L. J. Q. B. 411.)

In Scotland, in *Postmaster-General for Scotland v. Kerr* (1813), 17 F. C. 433, an action by the Postmaster-General against the cautioners of a deputy postmaster for the recovery of arrears was held to lie in the Court of Session.

Certain proceedings, in which it was attempted to make the Post-

master-General liable for the defaults of his subordinates, are dealt with in Book VII., at p. 641.

Proceedings under the Telegraph Acts.

The Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 4, authorised the Postmaster-General, with the consent of the Treasury, to purchase existing telegraphs, and vested any undertaking and other property so purchased in him in his corporate capacity and his successors.

By sect. 6, all acts, charters and grants, and all valid deeds and agreements made to, from, by, or with any company whose undertaking is sold and conveyed to the Postmaster-General (except in so far as varied or repealed by, or inconsistent with the Act), are to remain in full force, and all matters to be done, continued, or completed by or against the company, their officers and servants, "shall or may (as the case requires) be done, continued, or completed by or against the Postmaster-General, his officers and servants . . . and it shall be lawful for any person to enforce any such act, charter, grant, deed or agreement by action, suit, or other legal proceeding against the Postmaster-General in the same Court, and in the same manner, and with the same rights and liabilities to pay costs and otherwise, as if this Act had not been passed."

Sect. 2 incorporates the Telegraph Act, 1863 (26 & 27 Vict. c. 112), and provides that the term "the Company" in that Act shall, in addition to the meaning assigned to it in that Act, mean the Postmaster-General.

By the Telegraph Act, 1878 (41 & 42 Vict. c. 76), s. 11, as amended by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), "Any legal proceeding may be instituted by the Postmaster-General for any of the purposes of any of the Telegraph Acts in the name of Her Majesty's Postmaster-General, and shall not abate or be discontinued by reason of any change in the person who is Postmaster-General, but may be carried on as if Her Majesty's Postmaster-General were a body corporate; and where any sum is due or payable to the Postmaster-General under any of the Telegraph Acts, or any contract, agreement, or regulations made in pursuance or for any of the purposes of those Acts or any of them, the Postmaster-General may recover the same as a debt in any Court and in any manner in which it might be recovered as if it were a debt due to a private person."

The result of these sections, on the face of them, is to place the Postmaster-General in no more privileged position, when suing or being sued, than that occupied by the telegraph companies under the Telegraph Act, 1863, and before his purchase of their undertakings.

But it has recently been held that he is still entitled to the protection which he enjoys as a Minister of the Crown, although he is engaged in what may be described as trading operations. The case is *Bainbridge v. Postmaster-General*, [1906] 1 K. B. 178; 75 L. J. K. B. 366, which was an action against a sectional engineer in Post Office employment and the Postmaster-General for damages for personal injuries sustained through the negligence of the defendants or their servants. The Court of Appeal ordered the name of the Postmaster-General to be struck out of the writ on the ground that he was not liable in his official capacity, as head of the Telegraph Department of the Post Office, for wrongful acts done by his subordinates in carrying on the business of the Department, inasmuch as, on the authorities, which are dealt with more fully below, p. 641, the negligent persons did not stand to the Postmaster-General in the relation of servants to master, but were servants of the King just as the Postmaster-General himself was. This, they thought, applied in spite of the provisions of the Telegraph Act, 1863, which, by sect. 42, makes the company answerable for injuries happening through their act or default or through the act or default of anyone in their employment, by reason of their works, while by sect. 2 of the Telegraph Act, 1868, the word "company" is to include Postmaster-General. If, therefore, "Postmaster-General" be read instead of "company" in sect. 42, he is liable for injuries happening through his own default (of which there was no question in the case under discussion) or through the act or default of anyone in his employment, and, on the authorities, the servants of the Post Office are not in the employment of the Postmaster-General, but of the Crown. On this ground the decision can well be supported; whether the other reasons given for the judgment are valid may perhaps be doubted.

The previous case of *Jones v. Monsell* (1872), Ir. R. 6 C. L. 155, was also decided on the Telegraph Acts, and it was decided that the Postmaster-General could not be sued in his individual capacity for damage caused by the negligence of Post Office employés; but the Court did not decide whether the action could be maintained against him in his corporate or official capacity. The decision, therefore, cannot be regarded as of any great value.

In *Postmaster-General v. Green* (1887), 51 J. P. 582; 3 T. L. R. 780, the Postmaster-General sued for a sum due for the transmission of telegrams.

A.-G. v. Edison Telephone Co. of London, Ltd. (1880), 6 Q. B. D. 244; 50 L. J. Q. B. 145, was an information praying a declaration that the acts of the defendant company constituted an infringement of the exclusive privilege conferred upon the Postmaster-General by the Telegraph Act, 1869 (32 & 33 Vict. c. 73), an injunction to

restrain the company's operations and an account. There would seem to be no reason why the Postmaster-General should not have commenced these proceedings in his own name under the Telegraph Act, 1878, s. 11, as in *Postmaster-General v. National Telephone Co., Ltd.*, [1907] 1 Ch. 621; 76 L. J. Ch. 353; but probably in view of the importance of the case the advisers of the Crown thought a proceeding by information more appropriate and impressive.

While, under sect. 11 of the Telegraph Act, 1878, the Postmaster-General may sue in respect of any telegraph matter, it would appear that the provisions of sect. 6 of the Telegraph Act, 1868, only authorise proceedings against the Postmaster-General in respect of matters which have passed from the previous companies to the Postmaster-General, and not in respect of matters which have solely arisen during the latter's tenure of the telegraphs. Thus in *Great Western Rail. Co. v. R.* (1888), 4 T. L. R. 383, reported in the House of Lords as *Postmaster-General v. Great Western Rail. Co.* (1889), 5 T. L. R. 714, the company proceeded not by action but by petition of right, on which a special case was stated, praying for a declaration as to the construction of an agreement made between themselves and the Postmaster-General with regard to telegraph poles and wires, and for payment of money due to them under such agreement.

In *St. James and Pall Mall Electric Lighting Co., Ltd. v. R.*, [1904] W. N. 68; 73 L. J. K. B. 518, the company proceeded by petition of right to recover compensation assessed against the Postmaster-General under sect. 7 of the Telegraph Act, 1863, for damage done by his works to their undertaking.

The observations made and authorities cited above may be taken to apply also to the Postmaster-General in respect of telephones. Compare *Postmaster-General v. National Telephone Co., Ltd.*, [1907] 1 Ch. 621; 76 L. J. Ch. 353.

Proceedings before the Railway and Canal Commission.

By the Telegraph Act, 1878 (41 & 42 Vict. c. 76), ss. 3—5, differences between the Postmaster-General and any body or person having the power to give or withhold consent to the placing of telegraphs over or under streets or roads, branches of the sea or tidal waters, railways or canals, or any body or person having any power, jurisdiction or control over or relating to a street or public road, are to be decided by a magistrate, judge, or sheriff, and, on appeal, by the Railway and Canal Commission, except in the case of differences as to branches of the sea or tidal waters, which are to be referred on appeal to the Board of Trade.

Instances of proceedings under these sections are *Wandsworth District L. B. v. Postmaster-General* (1884), 4 Ry. & Can. T. C. 301; *Postmaster-General v. London Corporation* (1898), 10 Ry. & Can. T. C. 234; *Postmaster-General v. Edinburgh Corporation* (1899), *ib.* 247; *Postmaster-General v. Glasgow Corporation* (1900), *ib.* 238, all of which were concerned with differences between street and road authorities and the Postmaster-General.

It was doubted in *Postmaster-General v. Glasgow Corporation, ubi sup.*, whether the appeal from the Railway and Canal Commission allowed by sect. 17 of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), extended to cases arising under the Telegraph Acts; but in view of the terms of sect. 8 of the Railway and Canal Traffic Act, 1888, the doubt does not seem to be well founded.

By the Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38), ss. 1, 2, differences arising under any Act relating to the Conveyance of Mails or under the Post Office (Parcels) Act, 1852 (45 & 46 Vict. c. 74), with regard to any remuneration or compensation to be paid by the Postmaster-General to any railway company or person owning a steam vessel, or to any tramway company, are to be referred to the Railway and Canal Commission, and (sect. 4) may, in the discretion of the Commission, be heard and determined by the two appointed Commissioners. *Waterford, Limerick and Western Rail. Co. v. Postmaster-General* (1900), 11 Ry. & Can. T. C. 77, and *Great Western Rail. Co. v. Postmaster-General* (1903), 12 Ry. & Can. T. C. 11, were proceedings under the above provisions.

By the Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 2, if the Postmaster-General considers that the inhabitants of any district or any public authority are debarred from telegraphic conveniences by the refusal of any occupier, lessee, or owner of any land or building to consent to the construction or maintenance of a work by the Postmaster-General, he may apply to the Railway and Canal Commission, and the Commission may make an order consenting to such construction or maintenance absolutely or subject to conditions. Before doing so they must hold a local inquiry, and allow all persons interested to be heard, which they may do by one or two of their number or by an officer of the Commission, and Parts I. and IV. of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), except the sections relating to appeal, are to apply. They may also make an interlocutory order for the continuance of an existing work while the proceedings are pending. If the person against whom the order is made petitions the Commission in that behalf within one month, the order must be submitted to Parliament.

In the Isle of Man the Staff of Government Division of the High

Court of Justice is substituted for the Railway and Canal Commission (Telegraph (Isle of Man) Act, 1889 (52 & 53 Vict. c. 34), s. 1 (2)).

Recovery of Penalties.

Under the Post Office Acts.—By sect. 12 of the Post Office (Offences) Act, 1837 (7 Will. IV. & 1 Vict. c. 36), all pecuniary penalties imposed by the Post Office Acts may be sued for and recovered with full costs of suit by any person who shall inform and sue for the same in the High Courts in England and Ireland, and the Court of Session in Scotland, either by action or information. By sect. 13, penalties not exceeding 20*l.* may be recovered before justices (and see Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), s. 12).

By sect. 23, the Postmaster-General may compromise and compound any such action or information which is commenced by his authority or under his control on such terms as he shall in his absolute discretion think proper, with full power for him, or any of his officers or agents thereunto authorised, to accept the penalties incurred or alleged to be incurred, or any part thereof, without action or information brought or commenced for the recovery thereof. By sect. 24, penalties must be sued for within a year after they are incurred.

Under the Mail Ships Act, 1891.—By this Act (54 & 55 Vict. c. 31), s. 7 (1), every fine under the Act, if exceeding 50*l.*, may be recovered by action in the High Court in England or Ireland, or in the Court of Session in Scotland, and the Court in which it is recovered may reduce the amount of such fine; if not exceeding 50*l.*, it may be recovered summarily.

The proper procedure is an information by the Attorney-General (*Bradlaugh v. Clarke* (1883), 8 A. C. 354; 52 L. J. Q. B. 505).

Under the Telegraph Acts.—By the Telegraph Act, 1878 (41 & 42 Vict. c. 76), s. 10, all fines and penalties under any of the Telegraph Acts may be recovered summarily by the Postmaster-General, and are to be paid into the Exchequer. So in the case of penalties imposed by regulations made under the Wireless Telegraphy Act, 1904 (4 Edw. VII. c. 24), by sect. 3 (4) of that Act. See also the Telegraph Act, 1863 (26 & 27 Vict. c. 112), s. 4.

The Secretary for Scotland.

This official is appointed under the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61). He has an official seal and the official title of "The Secretary for Scotland." The same Act, together with the Secretary for Scotland Acts, 1887, 1889, and 1904 (50 & 51 Vict.

c. 52, 52 & 53 Vict. c. 16, and 4 Edw. VII. c. 27), transfers to him a large number of powers of other Departments so far as they relate to Scotland; but all the powers of the Secretary of State for War are expressly excepted. He is Keeper of the Seal appointed to be used in Scotland in place of the Great Seal of Scotland, but the rights, powers, privileges and duties vested in or imposed on the Lord Advocate by Act or custom are not to be prejudiced or affected.

Fines under the Alkali, &c. Works Regulation Act, 1906 (6 Edw. VII. c. 14), are, by sects. 17, 27, recoverable in Scotland with the sanction of the Secretary for Scotland. (See above, p. 50.)

Under the Local Taxation Returns (Scotland) Act, 1881 (44 & 45 Vict. c. 6), s. 3, penalties under that Act may be recovered summarily in the Sheriff Court or Court of Session, at the instance of the Lord Advocate. In private Acts relating to Scotland a clause is inserted, where appropriate, empowering the Secretary for Scotland to recover in the Court of Session penalties for contravention of the provisions there inserted with regard to the housing of persons of the working classes displaced by the undertakers; see, for instance, the North British Railway (General Powers) Act, 1905 (5 Edw. VII. c. clvii.), s. 27. Otherwise, it appears, the Secretary for Scotland cannot sue or be sued.

The Lord Lieutenant of Ireland.

The Lord Lieutenant of Ireland cannot be sued in any Irish Court during his term of office for any act done by him in his politic capacity, *i.e.*, *quâ* Lord Lieutenant, and the same privilege, apparently, would extend to any other Chief Governors or Governor of Ireland for the time being. The decided cases state the privilege in the above form, but it is apprehended that the privilege extends to all Courts and also to actions brought against a Lord Lieutenant after the conclusion of his term of office in respect of acts done by him *quâ* Lord Lieutenant when he was in office.

The earliest of these cases was *Tandy v. Earl of Westmoreland* (1792), 27 St. Tr. 1216. This was followed by *Luby v. Lord Wodehouse* (1865), 17 Ir. C. L. R. 618, and *Sullivan v. Earl Spencer* (1872), Ir. R. 6 C. L. 173. The defendant in each case was the Lord Lieutenant for the time being, and the defence put forward in each case on his behalf was that the acts complained of were acts of State, and could not be made the subject of an action. In each case the proceedings were stayed on motion, without the defendant's being required to plead privilege. (See also an observation in *Dutton v. Howell* (1693),

Show. P. C. 24, at p. 27.) It may be observed that the real basis of defence in the case of the Lord Lieutenant appears to be not so much that his acts are acts of State as that he, acting in his official capacity, is identified with the King, whose Viceroy he is. See also *R. v. Bodkin* (1908), *Times News*, Jan. 24, 25, 28, 29, 30.

The Inland Revenue Authorities.

General Provisions.

The Commissioners of Inland Revenue are appointed under the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 1. By sect. 21 of the Act, it shall not be lawful to commence proceedings against any person for the recovery of any fine, penalty or forfeiture under any Act relating to inland revenue, or for the condemnation of any goods seized as forfeited under any such Act, except by order of the Commissioners and in the name of an officer, or in England in the name of the Attorney-General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney-General for Ireland. This provision does not extend to certain criminal proceedings.

The section does not extend to any summary proceeding for the conviction or immediate arrest of any person under or by virtue of any Act relating to inland revenue, or to any proceeding on information or complaint of an officer of the peace for the recovery of a fine or penalty imposed in relation to an offence against any law of excise in any case in which such a proceeding is authorised. The power of the Commissioners to hear and determine informations for the recovery of any fine or penalty, or the condemnation of any goods seized as forfeited is abolished, and any information which might, under any enactment passed before the commencement of the Act, have been exhibited, heard, adjudged and determined by the Commissioners may go before a Court of summary jurisdiction, with an appeal as in the case of an information exhibited before a magistrate in respect of an offence against the excise laws.

By sect. 22, any fine or penalty incurred under any Act relating to inland revenue may be sued for and recovered, and any goods seized as forfeited under any such Act may be returned for condemnation and condemned, in the High Court. Proceedings for either purpose must be commenced within two years (but see now the Finance Act, 1907 (7 Edw. VII. c. 13), s. 23) after the fine or penalty is incurred or the seizure is made.

By sect. 23, any writ of subpœna or other process issued out of the High Court in relation to any such proceeding may be served on any

person in any part of the United Kingdom. If the person so served does not appear, the High Court certifies the default under its seal to the High Court of that part of the United Kingdom where service was made, and the last-mentioned Court punishes the defaulter as though he had neglected to appear in obedience to its own process. Where the default consists in failure to appear as a witness, the Court must be satisfied, before punishing, that reasonable expenses have been tendered. These provisions are not to affect the procedure under the Exchequer Court (Scotland) Act, 1856 (19 & 20 Vict. c. 56).

Sect. 24 provides for the proof of official documents and of the authority of officers.

Sects. 25, 26 lay down the procedure for the condemnation of seizures. When goods seized as forfeited under any Act relating to inland revenue are returned into the High Court, any claim thereto must be made within the time limited by law or the practice of the Court, and must be entered in the name of the proprietor of the goods, and must describe his place of residence and his business or profession. Such person or his solicitor must, in England or Ireland, make oath that the goods were the claimant's property at the time of the seizure, and give security for costs with two sureties in 100*l.* each. Otherwise the goods will be condemned as unclaimed.

At the trial the fact, form and manner of the seizure are to be taken to have been as set forth in the information without any evidence thereof.

By sect. 27, any officer or person employed or authorised by the Commissioners or the Solicitor of Inland Revenue in that behalf may, although he is not a solicitor, advocate, or writer to the signet, prosecute, conduct, or defend any information, complaint or other proceeding to be heard and determined by any justice of the peace, or by any sheriff in Scotland, where the proceeding relates to inland revenue, or to any fine, penalty, or other matter under the care and management of the Commissioners.

By sect. 32, the Commissioners may reward informers. Sect. 33 provides for the application of penalties, forfeitures and costs.

By sect. 35, the Commissioners may mitigate any fine or penalty incurred under the Acts relating to inland revenue, or stay or compound any proceedings for the recovery thereof, or for the condemnation of any seizure, and may restore any thing seized, and may also, after judgment, further mitigate or entirely remit any such fine or penalty. The Treasury also may mitigate or remit any such fine or penalty either before or after judgment, and may direct anything seized to be restored to the proprietor or claimer thereof.

These sections are printed below, p. 740.

As to the power of the Commissioners and their officers to take proceedings under the Customs Acts, see below, p. 70.

There is no power to sue the Commissioners.

Any unpaid duties or other sum due to the Crown under any of the Revenue Acts are recoverable by information (see below, p. 172), apart from any statutory provision. It is the duty of the Commissioners to see to the recovery of any balance due to the Crown from officers in their employ (Public Accountants Act, 1800 (39 & 40 Geo. III.), s. 12).

The proper procedure for the recovery of any duty overpaid or improperly paid by a subject is petition of right (*R. v. Commrs. of Inland Revenue, In re Nathan* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 229). (See below, pp. 111, 117, 343.) In the case of petition of right the Limitation Act, 1623, does not apply (see below, p. 393, where the matter is fully discussed), unless there is some special provision to the contrary, as in the case of income tax (see below, pp. 66, 354).

Excise.

The general provisions set out above apply, and, in addition, attention may be drawn to certain special provisions. Where a penalty is imposed upon every person committing an offence, and the offence has been committed by several persons jointly, such persons jointly and severally incur the penalty, and it is lawful to proceed against them jointly or severally for the recovery thereof, as the Commissioners deem expedient. (Excise Management Act, 1827 (7 & 8 Geo. IV. c. 53), s. 70.)

Sect. 68 of the last-cited Act provides for election by the Commissioners between suing for triple value and for the penalty of 100%.

Appeals by officers of excise are provided for by sects. 82, 84, as amended by the Inland Revenue Regulation Act, 1890, s. 40 and Sched., and the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 17 and Sched.

Seets. 18, 19, of the Excise Permit Act, 1832 (2 & 3 Will. IV. c. 16), provide for the condemnation of goods seized, in spite of the production of a permit by the owner, unless the owner proves certain matters, and further provide that in any proceedings respecting such condemnation the owner or claimant must prove the identity of the goods seized with those mentioned in the permit. The production at the trial of a counterpart of the permit with the request note is to be evidence of the issue and contents of the permit.

Stamps.

By the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 2, every person who, having received any sum of money as and for any duty, or any fee collected by means of a stamp, does not apply the money to the due payment of the duty or fee, and improperly withholds or detains the same, is accountable for the amount, and the same is a debt from him to the Crown and recoverable as such accordingly.

The Commissioners may sue out of the High Court in England or Ireland, or of the Court of Session sitting as the Court of Exchequer in Scotland, a writ of summons commanding any such person to deliver an account of every sum of money so received by him, and withheld or detained, and to pay the money to them, together with the costs of the proceedings, or to show cause to the contrary.

There seems to be no reason why the Attorney-General should not proceed by English information in such a case, if he prefers to do so. Such procedure is particularly appropriate in the case of a public officer who has failed to account for moneys of the Crown received by him. (See below, p. 239.)

By sect. 26 of the same Act, all fines imposed thereby or by any Act for the time being in force relating to stamp duties charged in respect of medicines or playing cards may be proceeded for and recovered in the same manner as any fine or penalty under any Act relating to the Excise.

By the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 121, all fines imposed by that Act are to be sued for and recovered by information in the name of the Attorney-General for England or Ireland or the Lord Advocate.

Appeals under the Stamp Act, 1891, by persons dissatisfied with the assessment of the Commissioners are, by sect. 13, to be by special case, which the Commissioners may be required to state within twenty-one days of the assessment, and on payment of the duty assessed. It is to be filed at the King's Remembrancer's Department for hearing within seven days after delivery. If the appellant is successful, the duty is ordered to be repaid to him with or without costs. The Commissioners may be given their costs if they succeed.

In these proceedings the Commissioners appear as respondents. The parties exchange points of argument before the hearing (see *Conservators of the River Thames v. Inland Revenue Commrs.* (1886), 18 Q. B. D. 279; 56 L. J. Q. B. 181), but this is merely a matter of convenience, and the points are not to be regarded as in the nature of strict pleading. The case is now heard by a single judge. The appellant begins and the Crown has, as usual (see above, p. 12), a

right to a general reply. (*Marquis of Chandos v. Inland Revenue Commrs.* (1851), 6 Ex. 464; 20 L. J. Ex. 269; *Potter v. Inland Revenue Commrs.* (1854), 10 Ex. 147; 23 L. J. Ex. 345; *N. M. Rothschild & Sons v. Inland Revenue Commrs.* (1894), 10 R. 204; 10 T. L. R. 328.) It is the duty of the Court to fix the amount of stamp duty exigible in respect of the matter under appeal, whether it be greater or less than that assessed by the Commissioners, but not to deal with other matters not the subject of appeal. (*Bray v. Lancashire J.J.* (1889), 22 Q. B. D. 484; 58 L. J. M. C. 54; *Maxwell v. Inland Revenue Commrs.* (1866), 4 M. 1121.)

The time for appealing from the order is fourteen days. (Ord. LVIII. r. 15, and *Onslow v. Inland Revenue Commrs.* (1890), 25 Q. B. D. 465; 59 L. J. Q. B. 556.)

Land Tax, Inhabited House Duties and Income Tax.

Penalties.—By the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 21, all penalties exceeding 20*l.* imposed by that Act, the Acts relating to income tax and inhabited house duties and the Land Tax Acts, and after the expiration of twelve months all penalties under these Acts, are to be recoverable in the High Court, and are to be sued for by information, and may be recovered with full costs of suit. See also sect. 111 of the same Act and sects. 21, 22 of the Inland Revenue Regulation Act, 1890, above, p. 60, and the Finance Act, 1907 (7 Edw. VII. c. 13), s. 23. The joint effect of the above sections is that penalties under the Acts above referred to are only recoverable elsewhere than in the High Court within twelve months and in the High Court within three years. (See *L. A. v. Sawers* (1897), 25 R. 242; 3 Tax Cas. 617.)

By sect. 19, all Commissioners and officers executing such Acts are exempt from all penalties other than those imposed by the Acts.

Appeals.—Appeals with respect to income tax and inhabited house duty are regulated by sect. 59 of the same Act. Immediately upon the determination of any appeal by the General Commissioners or the Special Commissioners under the Income Tax Acts or by the General Commissioners under the Acts relating to inhabited house duties, the appellant or the surveyor may, if dissatisfied with the decision as being erroneous in point of law, declare his dissatisfaction to such Commissioners and require them by notice in writing within twenty-one days to state a case. The case is to be filed at the King's Remembrancer's Department, Royal Courts of Justice, within seven days after receipt, and notice given to the other party, whether surveyor or appellant. The party requiring the case must pay the clerk to the Commissioners a fee of 20*s.* On the hearing the Court shall reverse, affirm, or amend the Commissioners' determination, and make such

order as it thinks fit as to costs and otherwise, and may, if it thinks fit, send the case back for amendment.

An appeal lies from the High Court to the Court of Appeal and the House of Lords, and, in Scotland, from the Court of Session as the Court of Exchequer to the House of Lords. The duty assessed is to be paid pending the hearing of the case, and is to be repaid in whole or in part to the appellant with such interest as the Court allows, or the balance, if any, is to be paid by the appellant, according to the event.

An appeal is only allowed on a question of law (*Peninsular and Oriental Steam Navigation Co. v. Leslie* (1900), 82 L. T. 137; 4 Tax Cas. 177; *British India Steam Navigation Co., Ltd. v. Leslie* (1900), 17 T. L. R. 104; 4 Tax Cas. 257). As to the general procedure, see the cases cited above, pp. 63, 64. The procedure in cases under the present section is the same.

The costs will follow the event, except in special circumstances, and the Crown's costs will include a fee for a Law Officer, who appears, even though he is paid by salary (*L. A. v. Stewart* (1899), 36 S. L. R. 945).

As to land tax appeals, see below, p. 187.

Arrears.—By sect. 111 of the Taxes Management Act, 1880, any duties contained, charged or assessed in or by any assessment thereof made under the Acts relating to income tax or inhabited house duties, or under that Act, may be sued for and recovered with full costs of suit and all charges attending the same from the person charged therewith in the High Court as a debt due to the Crown, or by any other ways or means whereby any debt of record, or otherwise due to the Crown, can or may at any time be sued or prosecuted for or recovered, as well as by any statutory summary means.

A schedule of arrears delivered on oath or affirmation by a collector and certified to the High Court by sect. 105 (6) of the Act, and a schedule of defaulters made or purporting to be made in pursuance of the Act and certified under the hands of the Inland Revenue Commissioners to the High Court, shall be sufficient evidence of a debt due to the Crown, and sufficient authority to a judge of the High Court to cause process to be issued against any defaulter named in such schedule to levy the sum in arrear.

Such schedule shall be sufficient evidence that the sum therein mentioned has been duly charged and assessed upon the defaulter therein mentioned, and of the same being due and owing and in arrear and not having been paid to the Crown.

Re-assessments.—The enactments for recovery of income tax, inhabited house duties and land tax apply to the enforcing of the

payment of any sum assessed or re-assessed by the Commissioners for duties or costs (Taxes Management Act, 1880, s. 113).

Insupers.—By sect. 112 of the same Act, if there is a failure to assess or charge the duties or land tax in any parish, or to return the duplicates of the assessments of the duties or land tax made for any parish, or to raise or pay the several sums charged upon any person for the duties or land tax in any parish, the Inland Revenue Commissioners may at any time after such failure, set insuper all sums so appearing in arrear, and may return such failure to the High Court by certificate thereof, containing the particulars mentioned in the section, and delivered to the King's Remembrancer, who shall enrol it. Such enrolment shall be a record in his office as valid and effectual to authorise the issuing of process against the county, division, parish and person. Such process shall be forthwith, and from time to time as there shall be occasion, issued out of the High Court on the application of the Commissioners against such of the commissioners, officers, or persons who have made such failure. (See *In re Bromley* (1817), 5 Price, 5.)

For an application for a distringas against collectors to enforce the re-assessment of the amount of deficiency on motion of the Attorney-General on behalf of the Commissioners, see *In re Assessed Taxes* (1823), 12 Price, 153.

Claims for Repayment of Income Tax.—By sect. 10 of the Income Tax Act, 1860 (23 & 24 Vict. c. 14), no claim for repayment of duty under that Act, or any former Act relating to the income tax, shall be allowed, unless it shall be made within three years next after the end of the year of assessment to which the claim shall relate. But in certain cases shorter periods of limitation have been fixed: by the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 133, and the Revenue Act, 1865 (28 & 29 Vict. c. 30), s. 6 (both now repealed by the Finance Act, 1907, s. 24), in the case of profits which turned out to be in fact less than the amount computed (see *R. v. Commrs. for Special Purposes of Income Tax* (1888), 21 Q. B. D. 313; 57 L. J. Q. B. 513; 2 Tax Cas. 332; *Russell v. North of Scotland Bank* (1891), 18 R. 543; 3 Tax Cas. 14); by sect. 61 of the same Act, in the case of allowances under Sched. A., Rule V., and by sect. 134, in the case of death or cesser of trade during the year of assessment; by the Income Tax Act, 1853 (16 & 17 Vict. c. 33), s. 18, in the case of rent lost by landlords in Ireland assessed under Sched. A.; by the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 12, in respect of diminished value of machinery or plant by reason of wear and tear; by the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 23, in

the case of losses in trade, business, or husbandry; and by the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 27, as to tax overpaid on profits of husbandry assessed under Sched. B.

Appeals in Ireland.—For Ireland there is a special provision in the Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 22, that persons aggrieved by a determination of the Commissioners for Special Purposes may, by notice in writing within ten days, require the appeal to be re-heard by one of the judicial officers mentioned in the section, and such officer shall take the oath of such a Commissioner, and may exercise all the powers of two or more Commissioners and give a final and conclusive decision.

Death Duties.

Recovery of Penalties.—The general provisions of the Inland Revenue Regulation Act, 1890, s. 21, as to the recovery of penalties under any Act relating to the Inland Revenue, of course apply to the recovery of penalties under the Acts relating to death duties. See also the Legacy Duty Act, 1796 (36 Geo. III. c. 52), ss. 43, 44, which are not yet repealed.

Recovery of Duties.—By sect. 8 of the Finance Act, 1894 (57 & 58 Vict. c. 30), “the existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act, and so far as the same are applicable, apply for the purposes of the collection, recovery and repayment of Estate Duty [which includes Settlement Estate Duty] . . . as if such law and practice were in terms made applicable to this part of this Act.”

Interest on arrears of estate duty, by sect. 9 of the same Act, is payable as if they were arrears of legacy duty, in accordance with the Inland Revenue Act, 1869 (31 & 32 Vict. c. 124), s. 9.

The ordinary method of recovering death duties is by information by the Attorney-General: see below, pp. 172 *sqq.* A special method is also provided by sects. 54—64 of the Crown Suits, &c. Act, 1865, and this is dealt with below, p. 186.

Sect. 20 (2) of the Finance Act, 1894, provides that nothing in the Act shall authorise the Commissioners to take any proceedings in a British possession for the recovery of any estate duty. They are, therefore, left to their personal remedy against any person accountable in this country.

Appeals with respect to Estate Duty.—These are brought under sect. 10 of the Finance Act, 1894, and are dealt with below, p. 187.

Appeals with respect to Succession Duty.—The Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 50, allows an appeal from an assessment to the High Court in any of the three kingdoms on twenty-one

days' notice, or to the County Court or Sheriff's Court, where the amount in dispute does not exceed 50*l*. The County Court Rules relating to such appeals are printed below, p. 802.

Limitation of Time.—The time for the recovery of estate duty by the Crown is limited by sect. 8 (2) of the Finance Act, 1894, which applies sects. 12—14 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), and sect. 47 of the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66).

The sections so applied provide a limitation of time for the recovery of legacy and succession duty.

The provisions as to succession duty are applied to the property tax on corporate and unincorporated bodies by the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 19.

The Commissioners of Customs.

The Commissioners of Customs are appointed under the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 1. There is no power to sue them. The sections here cited are printed below, pp. 716 *sqq.* By sect. 218, as amended by the Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 14, "All duties, penalties and forfeitures incurred under or imposed by the Customs Acts, and the liability to forfeiture of any goods seized under the authority thereof, may be sued for, prosecuted, determined and recovered by action, information, or other appropriate proceeding in the High Court of Justice in England, or by action of debt, information, or other appropriate proceeding in the superior Courts of common law at Dublin or Edinburgh, or in the Royal Courts of the islands of Guernsey, Jersey, Alderney, Sark, or Man, in the name of the Attorney-General for England or Ireland respectively, or of the Lord Advocate of Scotland, or of some officer of Customs or Excise, or by information in the name of some officer of Customs or Excise, before one or more justice or justices in the United Kingdom, the Isle of Man, or the Channel Islands: Provided always that sect. 44 of the Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), shall not apply to any offence against the Customs laws; and provided that in any proceedings for any penalty or forfeiture under the Customs Acts the fact that the duties of Customs have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of any such proceedings."

Sect. 219 provides for execution issuing, in the case of a verdict at the suit of the Crown against any defendant in the superior Courts, fourteen days after the verdict, as under the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 120.

By sect. 222, where a penalty has been jointly and severally

incurred, proceedings may be taken against the defaulters jointly by one information or severally by separate informations as the Attorney-General, the Lord Advocate, or the Commissioners think fit. In the case of a joint information the penalties are recoverable against each, although one or other of such persons may have allowed judgment to go by confession or default, or though the penalty adjudged to be paid by any one or other of the defendants may be for a different amount from that of the penalty in which any one or other of such several persons may be convicted, and though any one or other of such several persons may be acquitted.

By sect. 247, all suits, prosecutions, or informations for penalties under the Customs Acts in the High Court, or the Courts at Edinburgh and Dublin, may be commenced either by writ of subpoena or capias at the election of the Commissioners, in which shall be specified the amount of the penalties sued for, and, if by capias, the person against whom it is directed shall be bound with two sufficient sureties to the person to whom it is directed to appear on the return day, and on such appearance shall be bound over to answer and pay all the penalties sued for, or shall be imprisoned in default. By sect. 248, if the right to issue a capias is waived, a copy of the subpoena may be served anywhere in the United Kingdom, or on board any ship or vessel to which the defendant belongs or lately belonged.

The defendant is to be served with a copy of the information, and to plead within twenty days, or judgment is to be entered in default. In default of payment of a sum of money adjudged, execution is to issue against the defendant's body and all his property. (Sect. 249, and sect. 4 of the Revenue Act, 1883 (46 & 47 Vict. c. 55).)

Execution may issue to the sheriff of any county without reference to venue. (Sect. 250.)

The defendant may be allowed to proceed *in forma pauperis*. (Sect. 251.)

Every sheriff, mayor, bailiff, or other person accustomed to execute the process of the Courts must, on request of the Solicitor of Customs, or any person acting on his behalf, endorsed on the capias or process, grant a special warrant of apprehension. (Sect. 252.) The sheriff or other person shall be indemnified for escape (sect. 253), and, if he takes bail from the person arrested, he is to assign the bail bond to the Crown. (Sect. 254.)

Sects. 259—263 provide for the proofs of certain matters in such proceedings.

Sects. 264—267 deal with claims by the owners of goods seized, and sects. 273, 274, with the conduct of Customs cases.

By sect. 30 of the Customs Consolidation Act, 1876, if a dispute

arises as to the proper rate of duty payable on any goods admissible for home consumption, the importer or consignee, or his agent, is to deposit in the hands of the collector of Customs at the port of importation the duty demanded, which shall be deemed the proper duty payable, unless an action or suit is commenced by the importer within three months after such deposit against the collector, to ascertain whether any, and what, duty is payable. If it is decided in such action or suit that a less amount of duty or no duty is payable, part or the whole of the deposit is to be returned to the importer, with interest at 5 per cent.

Sects. 32—35 provide for the open hearing of appeals by a Commissioner on the application of a person aggrieved by a decision of the Commissioners, such appeal to be heard, in London, by a Commissioner in London, and elsewhere by a collector or other person appointed by the Commissioners.

Sects. 36—38 provide for inquiries by the Commissioners into any matter under their management, or the conduct of any person employed therein.

The Act of 1876 applies to the United Kingdom, the Isle of Man (sect. 277), and the Channel Islands (sect. 289).

The Commissioners and officers of Inland Revenue are placed in the same position as the Commissioners and officers of Customs with respect to proceedings for penalties and forfeitures under the Customs Acts by the Excise Act, 1828 (9 Geo. IV. c. 44), s. 2, and the Excise Management Act, 1834 (4 & 5 Will. IV. c. 51), s. 28.

It is the duty of the Commissioners of Customs to see to the recovery of balances due to the Crown from any of their officers. (Public Accountants Act, 1800 (39 & 40 Geo. III. c. 51), s. 12.)

The Land Tax Commissioners.

There appears to be no provision for suits against Land Tax Commissioners; see also the Land Tax Act, 1797 (38 Geo. III. c. 5), s. 48. *Williams v. Steward* (1817), 3 Mer. 472, dealt with Commissioners for the redemption of the land tax, a different body from the Commissioners who assess the land tax, and decided that no remedy lay against them in Chancery, but, if at all, by mandamus or suit in the Exchequer.

Land Tax Commissioners may, however, be made parties to appeals as to land tax. The procedure on such appeals is dealt with below, p. 187.

They are liable to penalties for acting without being duly qualified under the Land Tax Act, 1797 (38 Geo. III. c. 5), s. 96, and the Land Tax Commissioners Act, 1798 (38 Geo. III. c. 48), s. 1, the

latter section amended by the Land Tax Commissioners Act, 1906 (6 Edw. VII. c. 52), s. 2 and Schedule.

The Land Tax Commissioners or General Commissioners for a division or parish are to defend any action or suit brought against one of their collectors. (Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 20.) Compare *Newton, Chambers & Co., Ltd. v. Hall*, [1907] 2 K. B. 446; 76 L. J. K. B. 908.

The Board of Education.

This Board was established by the Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 1, and charged with the superintendence of matters relating to education in England and Wales. By sect. 7 (1), it may sue and be sued, and may for all purposes be described by the name of "the Board of Education," and shall have an official seal. By sect. 2, it is to take the place of the Education Department (including the Department of Science and Art), and the Crown may, from time to time, by Order in Council, transfer to it any of the powers of the Charity Commissioners or the Board of Agriculture in matters relating to education. Orders in Council (entitled respectively the Board of Education (Powers) Order in Council, 1900, 1901, and 1902) have transferred to the Board practically all the powers of the Charity Commissioners under the Endowed Schools Acts, 1869 to 1889, the Charitable Trusts Acts, 1853 to 1894, and several other Acts, so far as those powers relate to endowments held solely for educational purposes.

As to legal proceedings, in which the Board of Education may be concerned as successors of the Charity Commissioners, see below, p. 90.

Under sect. 39 of the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), if the governing body of any endowment to which a scheme made by the Commissioners, now the Board of Education, under that Act relates, or any person or body corporate directly affected by such scheme, feels aggrieved by the scheme on the grounds mentioned in the section, they may within two months petition the Privy Council, stating the grounds of the petition, and praying the Crown to withhold approval from the whole or any part of the scheme. Such a petition may not be presented where the average annual gross income of the endowment for the three preceding years has not exceeded 100%. (Sect. 42.) It is to be referred to the Judicial Committee of the Privy Council, and be treated in the same way as an ordinary appeal. (Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 14.) For an instance of such an appeal, see *Ross v. Charity Commrs.* (1882), 7 A. C. 463; 51 L. J. P. C. 106.

The Board of Education Act, 1899, as already pointed out, provides generally that the Board may sue and be sued. It appeared as plaintiff in the probate suit *In the Estate of Bryan, Board of Education v. Reubell*, [1905] P. 88; 74 L. J. P. 41; 20 T. L. R. 290, where the testator had bequeathed the residue of his property to the Victoria and Albert Museum, and the will was disputed by relatives.

Sums paid by the Board under the Education (Local Authority Default) Act, 1904 (4 Edw. VII. c. 18), s. 2, are Crown debts.

The Scotch Education Department.

This Department, meaning "The Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland" (Interpretation Act, 1889, s. 12 (7)), was originally organised by the Education (Scotland) Act, 1872 (35 & 36 Vict. c. 62), and re-constituted, with the addition of the Secretary for Scotland as Vice-President, by the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61), ss. 6, 7.

It does not appear that it can sue or be sued.

The Irish Education Authorities.

The Commissioners of Education in Ireland.

Constituted under this title by the Endowed Schools (Ireland) Act, 1813 (53 Geo. III. c. 107), s. 1, with perpetual succession and a common seal. By sect. 5 they may sue and be sued in the name of their secretary.

Additional Commissioners were provided for by the Endowed Schools (Ireland) Act, 1822 (3 Geo. IV. c. 79), ss. 2, 3.

They appeared by themselves and not by their secretary before the Land Commission in *Commrs. of Education v. Callan* (1903), 37 I. L. T. R. 51.

The Intermediate Education Board for Ireland.

Constituted by the Intermediate Education (Ireland) Act, 1878 (41 & 42 Vict. c. 66), s. 1, under the above title as a body corporate with a common seal.

Neither this nor the subsequent Acts specifically enable the Board to sue or be sued.

The Commissioners of National Education in Ireland.

These Commissioners were incorporated by a Royal Charter of 1845, and powers are conferred on them by the Irish Education Act, 1892 (55 & 56 Vict. c. 42), as interpreted by the Irish Education Act, 1893 (56 & 57 Vict. c. 41), s. 2. Apparently they can neither sue nor be sued.

*The Department of Agriculture and other Industries and Technical
Instruction for Ireland.*

See below, p. 74.

The Board of Agriculture and Fisheries.

This Board was constituted under the title of the Board of Agriculture, consisting of various exalted officials, by sect. 1 of the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), and by sect. 6 it might sue and be sued, and for all purposes be described by that name.

Its title is now the Board of Agriculture and Fisheries by the Board of Agriculture and Fisheries Act, 1903 (3 Edw. VII. c. 31), s. 1, and that is the title by which it must now sue or be sued.

It has succeeded, among other bodies, the Tithe Commissioners, the Copyhold Commissioners, and the Inclosure Commissioners and their successors, the Land Commissioners. An action, therefore, could be brought against the Board by a person dissatisfied with any determination of theirs concerning any claim or interest to or in land proposed to be inclosed, under sect. 56 of the Inclosure Act, 1845 (8 & 9 Vict. c. 118); compare *Musgrave v. Inclosure Commrs. for England and Wales* (1874), L. R. 9 Q. B. 162; 43 L. J. Q. B. 80. There is an observation of Wills, J., in *Gilbert v. Corporation of Trinity House* (1886), 17 Q. B. D. 795; 56 L. J. Q. B. 85, which seems to put the Copyhold Commissioners in the same position as the Trinity House (see below, p. 104), *sed quære*.

The Fishery Board for Scotland.

Established by the Fishery Board (Scotland) Act, 1882 (45 & 46 Vict. c. 78), s. 4, and re-constituted by the Sea Fisheries Regulation (Scotland) Act, 1895 (58 & 59 Vict. c. 42), s. 4.

Their secretary is empowered by sect. 32 of the Crofters Holdings (Scotland) Act, 1886 (49 & 50 Vict. c. 29), to sue for and recover summarily in the name of the Board moneys due to them in respect of loans made by them under that Act, and a certificate purporting to be signed by the chairman and secretary stating the amount due from any person in respect of a loan, together with the interest thereon, shall, until the contrary is proved, be evidence of the amount due and the liability of the person.

The Department of Agriculture and other Industries and Technical Instruction for Ireland.

Established under the above comprehensive title by the Agriculture and Technical Instruction (Ireland) Act, 1899 (62 & 63 Vict. c. 50), s. 1. Its duties are mainly concerned with agriculture and fisheries, and were transferred to it on April 1st, 1900. Neither it nor any of the three subordinate bodies, the Council of Agriculture, the Agricultural Board, or the Board of Technical Instruction, established under it can sue or be sued in general, but sect. 17 provides that the Department may take such steps as they think proper for appearing as complainant on behalf of any persons aggrieved in reference to any matter (other than a matter affecting the Postmaster-General, as to which see above, p. 56) which the Railway and Canal Commissioners have jurisdiction to hear and determine.

The National Debt Commissioners.

“The Commissioners for the time being for the Reduction of the National Debt” (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (17)) were constituted for Great Britain by the National Debt Reduction Act, 1786 (26 Geo. III. c. 31), s. 14, and the Life Annuities Act, 1808 (48 Geo. III. c. 142), s. 32; and by the Consolidated Fund Act, 1816 (56 Geo. III. c. 98), s. 13, their functions were extended to Ireland.

By the Government Annuities Act, 1864 (27 & 28 Vict. c. 43), s. 10, if payment of any sum of money due on a contract made under that Act for payment of money on death is refused by the Commissioners, the party beneficially interested therein may, if he thinks fit, instead of proceeding to arbitration in manner provided by the Savings Bank Acts, take proceedings against the Commissioners in the County Court of the district in which such contract was entered into, or, with the consent of the said Commissioners, in any other County Court within the jurisdiction of which such party may be resident, for the recovery of the amount, and the decision of such County Court shall be final and binding for all purposes and without appeal. For the purposes of the Act the contract is to be deemed to have been entered into at the place where the party insured resided at the time at which the contract bears date.

In Scotland the Sheriff Court and in Ireland the Civil Bills Court of the Chairman of Quarter Sessions take the place of the County Court.

For the purpose of arbitration under the Savings Bank Acts the

Commissioners are, when necessary, to be deemed to be in the place of the trustees of the savings banks.

Apart from the above provisions, it seems that the Commissioners cannot sue or be sued. But it appears to the author that, with regard to some of their duties, for instance, the payment of annuities, they may be regarded as under a duty towards the subject, and might be liable to a mandamus to pay (see below, p. 112). They would also probably have to submit to garnishee proceedings in respect of any instalments due from them (see below, p. 611).

Penalties and forfeitures under the Government Annuities Act, 1829 (10 Geo. IV. c. 24), by sect. 43, and under the Government Annuities Act, 1853 (16 & 17 Vict. c. 45), by sect. 34, respectively, are to be recovered by information in the High Courts of England and Ireland and the Court of Session in Scotland, and are to be paid to the Commissioners and become part of the Consolidated Fund. The Commissioners may pay not more than half the penalty recovered, after deducting all charges and expenses, to the informer or informers.

Under the Government Annuities Act, 1882 (45 & 46 Vict. c. 51), s. 12, the penalties incurred by a person who receives payment of an annuity in fraud of the Commissioners are recoverable in the County Court or any other competent Court as a debt to the Crown.

Where a petition is lodged in the Chancery Division under the National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 55, by a person claiming stock which has been transferred to the National Debt Commissioners, and the dividends thereon, it must be served on the Attorney-General and the Commissioners, and the costs and expenses of the Attorney-General and the Commissioners in resisting or appearing on any such petition, if not ordered by the Court to be paid out of the stock and dividends thereby claimed, must be paid by the Commissioners out of unclaimed dividends. Further, as to the Attorney-General's costs, see below, p. 625.

A form of such a petition will be found below, p. 545.

The Commissioners of Woods and Forests.

This, or "Commissioners of Woods," is a short title for the Commissioners of His Majesty's Woods, Forests and Land Revenues for the time being (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (12)). Their powers extend to the whole of Great Britain and Ireland. As to England and Ireland, the Commissioners in their modern form were constituted by the Crown Lands Act, 1829 (10 Geo. IV. c. 50), s. 8, though such Commissioners had existed previously. Sect. 17 exempts the Commissioners from personal responsi-

bility under any instrument executed by them under the Act, and also from personal liability for sums, costs, damages and expenses recovered in any suit against the Commissioners, or any of them, or their representatives, on any such instrument. The Act seems to contain no express power to sue them. Palles, C.B., however, in *Murphy v. Soady*, [1903] 2 I. R. 213, n., seems to have thought that, by sect. 17, it conferred a right of action against the Commissioners, and a similar view is dubiously put forward by Wickens *arguendo* in *Felkin v. Lord Herbert* (1861), 1 Dr. & Sm. 608; 30 L. J. Ch. 604, as appears from the transcript of the shorthand note in the author's possession. *Sed quare strenuissime*. Sect. 103 preserves the right of the Crown to proceed by information or otherwise, notwithstanding anything in the Act.

By the Crown Lands Act, 1832 (2 & 3 Will. IV. c. 1), s. 1, the Commissioners were replaced by the Commissioners of His Majesty's Woods, Forests, Land Revenues, Works and Buildings, and by sect. 5 (now repealed) it was provided that suits pending by or against the old Commissioners should be carried on against the new. There is, again, no express power to them to sue or be sued.

The Crown Lands Act, 1851 (14 & 15 Vict. c. 52), by ss. 1, 2, reconverted them into the Commissioners of Woods, Forests and Land Revenues, and separated from them the office and duties of the Commissioners of Works (*q. v.* below, p. 79). This Act confers on the Commissioners no power to sue or liability to be sued.

53 Geo. III. c. 121 (Regent Street), however, which conferred and imposed powers and liabilities on certain Commissioners, to whom the present Commissioners have succeeded, by sects. 56, 57, provides that they may sue and be sued in proceedings under that Act in the name of their secretary, and exempts them from personal liability. A similar provision is to be found in sect. 55 of 7 Geo. IV. c. 77, an Act which conferred further powers on the same Commissioners.

Nurse v. Lord Seymour (1851), 13 Beav. 254, was an action on the last-cited statute, brought against the Commissioners themselves, with the consent of the Crown, the office of secretary being vacant, for the purpose of obtaining specific performance of an agreement made by them with the plaintiff. It was held that they could not sue or be sued for such a purpose, on objection taken by the Crown that proceedings, if any, ought to be by petition of right. The Attorney-General argued that there was no case in which they had been plaintiffs, but that the Attorney-General, as representing the Crown, had always sued. Lord Langdale, M.R., said: "The Commissioners of Her Majesty's Woods and Forests are persons who have certain powers and authorities, but who do not appear to have any estate

whatever in the Crown lands, and the question which arises is, whether their authorities are of such a nature as to entitle persons who enter into contracts and have dealings with them, to have as against them relief of that species which is usually to be had against those who are possessed of rights and estates. It is truly said, that if the Commissioners are liable to sue and to be sued, such liability must rest alone upon grounds and reasons distinctly stated in the statute; for their powers are entirely statutory, and nothing else. Is there anything contained in the statute which shows that the Commissioners are liable to be sued for the specific performance of an agreement? They are capable of entering into agreements with the consent of the Lords of the Treasury; when they have entered into those agreements, they may be enforced in the ordinary way as in the case of estates vested in the Crown: they do not appear capable of being enforced otherwise. The Commissioners of Woods and Forests are persons merely possessed of certain powers, having duties connected with them, and who, on certain occasions, have a right to sue and to be sued by their secretary But the actions which may be brought by or against them are to be in relation to certain matters only; and I do not find that there is, in this Act of Parliament, anything to entitle the Court to say that they have a right to sue or are liable to be sued in respect of the specific performance of agreements."

There are other reported proceedings in England and Ireland to which the Commissioners were parties.

Re Commrs. of Woods and Forests, E. p. Halloran (1845), 7 Ir. Eq. Rep. 487, was an application as to the costs of a reference to ascertain the rights of parties to certain purchase-money paid by the Commissioners.

In re Thomas, E. p. Commrs. of Woods and Forests (1888), 21 Q. B. D. 380; 57 L. J. Q. B. 574, was a motion by the Commissioners to set aside a notice of disclaimer by an official receiver of shares in a gale in the Forest of Dean.

Monck v. Huskisson (1827), 1 Sim. 280; 4 Russ. 121, n.; 5 L. J. Ch. (O. S.) 163, decided before the Act of 1829, was a bill for specific performance of a contract for the sale of lands to the Commissioners.

In *Rankin v. Huskisson* (1830), 4 Sim. 13, an injunction was granted to restrain the Commissioners from building on a site in violation of an agreement with the plaintiffs. The point was taken that the Commissioners could not be enjoined, but an injunction was granted against the Commissioners and the builders. It is submitted that this decision was wrong, and, as a matter of fact, an injunction

against the builders alone, which would have been quite legitimate, would have been just as effectual.

In *Squire v. Campbell* (1836), 1 My. & Cr. 459; 6 L. J. Ch. 41, which was also a bill for an injunction against certain persons, the Commissioners were made parties as owners of the soil, but no injunction was asked for against them.

To these must be added two cases in 1832 which are not reported, *Fenton v. Ponsonby* and *Lothian v. Ponsonby*. In each of these a bill of complaint was filed against the Commissioners; in the former case, with regard to the terms on which a Crown farm was to be let, in the latter, for an injunction to restrain the Commissioners from building on a certain open space so as to obstruct the complainant's view. In each case the Commissioners' defence ran: "These defendants, reserving all right of exception to the said complaint, for answer thereto, &c" This would seem to be a merely formal reservation; no specific mention is made of any prerogative claim on behalf of the Commissioners.

In *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963, it was held that no right of light could be established against either a lessee of the Commissioners or the Commissioners themselves on behalf of the Crown as reversioners.

In Scotland, the Crown Lands (Scotland) Act, 1832 (2 & 3 Will. IV. c. 112), gave the Treasury power to hand over the Crown's lands and hereditaments in Scotland to the Commissioners of Woods, Forests, Land Revenues, Works and Buildings. The Crown Lands (Scotland) Act, 1833 (3 & 4 Will. IV. c. 69), s. 2, gave them the same powers over Crown property in Scotland as they had in England by the Crown Lands Act, 1829. By sect. 22: "It shall and may be lawful for the said Commissioners . . . to sue and be sued in any Court of law in Scotland in the name of His Majesty's Lord Advocate of Scotland for the time being; and it is hereby declared that service of any legal proceedings upon the said Lord Advocate, and an intimation of such service to the said Commissioners by letter addressed to the First Commissioner of Woods, Forests, Land Revenues, Works and Buildings, London, and put into the General Post Office, shall be deemed and held to be sufficient service on the said Commissioners, any law or practice to the contrary notwithstanding."

There have been a fair number of Scottish suits (entitled in the reports as by or against the Commissioners) raised in pursuance of this section, but they appear to have involved no material points of Crown practice.

The Commissioners of Works.

The "Commissioners of Works" are the Commissioners of His Majesty's Works and Public Buildings for the time being. (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (13).) The modern organisation of this Department is based on the Crown Lands Act, 1851 (14 & 15 Vict. c. 42), which separates the Departments of Woods and Forests and of Works and Public Buildings. By sect. 1, the First Commissioner of Woods and Forests is made First Commissioner of Works and Public Buildings, and by sect. 15 certain *ex-officio* Commissioners are appointed who, with the First Commissioner, are to be styled "The Commissioners of Her Majesty's Works and Public Buildings." By sect. 31, pending contracts are transferred to the Commissioners, but it is provided that "nothing in this Act contained shall extend or be taken to prejudice or affect the prerogative or rights of Her Majesty, or the right, power or duty of Her Majesty's Attorney-General, to sue or defend, or other rights, powers, or duties of such Attorney-General in regard to any contract, or any action, suit or proceeding, whether such contract, or such action, suit, or proceeding shall affect or concern" the Woods Department or the Works Department.

By the Commissioners of Works Act, 1852 (15 & 16 Vict. c. 28), s. 1, the Commissioners are incorporated by the name and style already given to them, and are to have perpetual succession and a common seal for the purpose of taking, holding and disposing of lands and hereditaments. Besides the property vested in them by the Act of 1851, other property has from time to time been vested in them as a corporation. The Works and Public Buildings Act, 1874 (37 & 38 Vict. c. 84), sweeps in all the previous Acts and incorporations and property under them, and by ss. 2, 4, declares the Commissioners to be a corporation to all intents and purposes, and gives them all the estates, powers and authorities given under the previous Acts. Various other property has been vested in the Commissioners, or they have been given power to acquire it, by subsequent Acts, and by the Commissioners of Works Act, 1894 (57 & 58 Vict. c. 23), the Lands Clauses Acts (except the provisions as to compulsory purchase) are incorporated with the Act of 1852. By the Ancient Monuments Protection Act, 1882 (45 & 46 Vict. c. 73), s. 8, they, as regards Great Britain, and the Commissioners of Public Works, as regards Ireland, were incorporated for the purposes of the Act. There is no general power in any statute whereby the Commissioners can sue or be sued, though there are special provisions to that effect for the purposes of particular Acts. These are 2 & 3 Vict.

c. 80, s. 19 (new thoroughfares); 9 & 10 Vict. c. 39, s. 1 (Battersea and Chelsea Improvements); 9 & 10 Vict. c. 34, s. 2 (Commercial Road), in all three cases as successors of the combined Woods, Forests, Land Revenues, Works and Buildings Commissioners, while in the first case actions are to be brought against the secretary of the old body; 14 & 15 Vict. c. 77, s. 3, as amended by the Works and Public Buildings Act, 1874 (37 & 38 Vict. c. 84), ss. 2, 3 (Battersea Park); 15 & 16 Vict. c. 29, s. 2 (Kennington Common); and 22 & 23 Vict. c. 58, s. 1 (Westminster Bridge). It will be noticed that all these Acts refer to ordinary London improvements. The Crown Estate Paving Act, 1851 (14 & 15 Vict. c. 95), by sect. 4, provides for actions against previous Commissioners being continued against the Commissioners under that Act, who are composed of the Commissioners of the Treasury, of Woods and of Works, and, by sect. 34, provides for the recovery of certain contributions from the Commissioners of Works by action. Otherwise, no Act which vests public buildings or Crown property in the Commissioners appears to provide that they should sue and be sued. This fact seems to be important for the criticism of the decision in *Graham v. His Majesty's Commrs. of Public Works and Buildings*: see below, p. 81.

The Commissioners have not infrequently appeared as plaintiffs in practice, and in *A.-G. v. Leonard* (1888), 38 Ch. D. 622; 57 L. J. Ch. 860, they figure as co-plaintiffs with the Attorney-General. Their position as defendants will now be discussed.

In two early cases, *Thorn v. Commrs. of Her Majesty's Works and Public Buildings* (1863), 32 Beav. 490, and *Corbett v. Commrs. of Her Majesty's Works and Public Buildings* (1868), 18 L. T. 548, actions were successfully brought against the Commissioners for specific performance of agreements. In neither case, however, was any objection taken by the Commissioners to the form of the action, and in the former case, which arose under the Westminster Bridge Act, 1853 (16 & 17 Vict. c. 46), the Act, s. 2, contained a special provision that the Commissioners might sue and be sued. Neither was any objection taken in *Gedye v. Commrs. of Her Majesty's Works and Public Buildings* (1891), 7 T. L. R. 488, also an action for specific performance of an agreement, or in the earlier suit of the same nature, *Gedye v. Commrs. of Public Buildings* (1868), 19 L. T. 82. *Commrs. of Her Majesty's Works and Public Buildings and Battersea Park Commrs. v. Harby* (1857), 23 Beav. 508; 26 L. J. Ch. 472, was an interpleader suit, in which the plaintiffs had no interest, arising out of a contract for the execution of works made by the plaintiffs. *White v. Commrs. of Her Majesty's Works and Public Buildings* (1870), 22 L. T. 591, was an appeal from an arbitrator

under the Public Offices Site Act, 1866 (29 & 30 Vict. c. 21), incorporating the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18). The proceedings entitled *Streatham and General Estates Co., Ltd. v. Commrs. of Her Majesty's Works and Public Buildings* (1888), 52 J. P. 615, were really an ex parte motion for a rule nisi for a certiorari to quash compensation proceedings held under the Lands Clauses Consolidation Act, 1845.

In re Wood's Estate, E. p. Her Majesty's Commrs. of Works and Buildings (1886), 31 Ch. D. 607; 55 L. J. Ch. 488, arose out of the Downing Street Public Offices Extension Act, 1855 (18 & 19 Vict. c. 95), and it was held that the Lands Clauses Consolidation Act, 1845, s. 80, was incorporated in the above-mentioned Act, and therefore was binding on the Commissioners, whether they represented the Crown or not. The decision of this latter point was, therefore, unnecessary, but Lindley, L.J., observed that although the Crown could not be ordered to pay costs, no authority had been cited to show that the particular corporation, incorporated by the Downing Street Public Offices Extension Act, 1855, for certain purposes was to be treated as the Crown, and there was no ground for holding that a corporation specially incorporated in that way was in the same position as regards costs as the Crown. It is respectfully submitted that it would be for those who asserted that the Commissioners of Works were not the Crown to adduce authority to that effect, and not for those who asserted that they were. If there is anything in the point about special incorporation, that is now removed by the general incorporation enacted by the Works and Public Buildings Act, 1874.

In *In re Mills' Estate, E. p. Commrs. of Works and Public Buildings* (1886), 34 Ch. D. 24; 56 L. J. Ch. 60, a decision not under the same Act, the Court followed *In re Cherry's Settled Estates* (1862), 4 D. F. & J. 332; 31 L. J. Ch. 351, disapproving Lord Esher's dictum in *In re Wood's Estate, ubi sup.*, which threw doubt on *In re Cherry's Settled Estates*, and held, as in this latter case, that the Court had no power to award costs against the Commissioners of an application for payment out of purchase moneys standing in Court in respect of lands taken under the powers of their Acts.

However, in *Graham v. His Majesty's Commrs. of Public Works and Buildings*, [1901] 2 K. B. 781; 70 L. J. K. B. 860, it was decided that an action would lie against the Commissioners for damages for breach of a contract entered into by them with a firm of builders for the erection of a public building. It is respectfully submitted that this decision is open to the gravest doubt, a doubt which is fortified by the fact that the two learned judges, who concurred in it, did so on totally different grounds. Ridley, J., thought the Com-

missioners must be taken to have made the contract specially themselves, and not as agents of the Crown. He said: "The Commissioners of Works make these contracts, in the course of their duty, in all parts of the country in respect of works required for His Majesty's Government. I think the true inference is that they make them in their own capacity." It is not easy to see how, if they made the contract (for the erection of a post office) in the course of their duty and for the purposes of the Government, they could possibly have been contracting for themselves, and not as agents for the Crown. Ridley, J.'s view apparently did not commend itself to Phillimore, J. He thought the Commissioners were in the position of servants of the Crown, who may be sued on their contracts for the purpose of obtaining a judgment declaratory of the right of the subject who has contracted with them. He points out that this is sometimes the case by statute, and that the Commissioners have been sued under particular statutes. (See as to these statutes above, p. 80.) But how does it follow from this that they can be sued where there is no statutory provision to that effect? He suggests that the mere fact of their being incorporated without reservation confers the privilege and liability of suing and being sued. But it is not easy to see why, and the author is aware of no authority to the effect, that incorporated servants of the Crown are any more liable to be sued, apart from statutory provision, than unincorporated servants of the Crown, if they are contracting for the Crown and not for themselves. (See as to this, *Mersey Docks and Harbour Board Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; 35 L. J. Ex. 225; *Sanitary Commrs. of Gibraltar v. Orfila* (1890), 15 A. C. 400; 59 L. J. P. C. 95; *Wheeler v. Commrs. of Public Works in Ireland*, [1903] 2 I. R. 202, at p. 247. As to cases where servants of the Crown render themselves personally liable under contracts, see below, p. 645.)

It is greatly to be regretted that the Crown did not proceed further with the case. The defence and reply, raising the point of law, will be found printed below, p. 138.

Reference must also be made on the general question to the cases on the position of the Irish Commissioners of Public Works, which are fully discussed below, pp. 84, 85.

It should perhaps be mentioned that in *Hearn v. Commrs. of Works and Public Buildings* (1899), not reported, the Commissioners were sued in the County Court for damages for injury to a vehicle alleged to be due to the bad state of repair of a road in Regent's Park. The plaintiff was non-suited, but it does not appear that the question of prerogative was raised by the defendants.

R. v. McCann (1868), L. R. 3 Q. B. 677; 37 L. J. M. C. 123, shows that property in the occupation of the Commissioners as

servants of the Crown is not liable to poor rate, and it appears from *Perry v. Eames*, [1891] 1 Ch. 658; 60 L. J. Ch. 345, that where property is vested in them as trustees for the Crown, no rights of light can be acquired over it.

The Commissioners of Public Works in Ireland.

Power to appoint Commissioners was given to the Crown by sect. 5 of the Public Works (Ireland) Act, 1831 (1 & 2 Will. IV. c. 33). By sect. 44, all mortgages and assurances are to be made to the secretary of the Commissioners, and by sect. 49 the secretary for the time being may sue upon them. Sect. 44 is superseded by sect. 3 of the Public Works (Ireland) Act, 1869 (32 & 33 Vict. c. 74), cited below. *Quere*, whether sect. 49 is affected thereby. Sects. 86—88 provide for the participation of the Commissioners by their secretary in bankruptcy proceedings. By sect. 91 the Commissioners may sue and be sued in the name of their secretary for the time being, and no such action or suit is to abate or be discontinued by the death or removal of such secretary, or by the act of the secretary without the consent of the Commissioners, but the secretary for the time being is always to be deemed the plaintiff or defendant as the case may be; and no action or suit is to be brought against the Commissioners collectively or individually, or against their secretary, except in the High Court, and with the leave of such Court first had and obtained, and upon such terms and conditions as the Court directs.

Sects. 21, 22 provide for the issuing of a warrant by the Commissioners to their solicitor, requiring him to proceed against persons who have become bound by virtue of any obligation entered into in pursuance of the Act, and who have made default or broken conditions; and such proceedings are not to be discontinued or abated without the authority of the Commissioners under their seal, exhibited to the Court. It is further provided that no writ of *seire facias* is required in such proceedings, but that upon the production of the Commissioners' warrant an extent is to issue.

The Public Works (Ireland) Act, 1836 (6 & 7 Will. IV. c. 108), s. 6, provides for the making of obligations to the secretary instead of the King, together with a warrant of attorney for confessing judgment thereon.

The Public Works (Ireland) Act, 1869 (32 & 33 Vict. c. 74), s. 2, constitutes the Commissioners a corporation with perpetual succession and a common seal, and power to hold lands of any tenure for the purposes of that Act, and of taking, acquiring and holding any lands in Ireland required for any department of the public service, or for

any public purpose. By sect. 3, all lands so required and taken by the Commissioners, or required to be vested in their secretary by any Act, are to be granted to and held by the Commissioners as such corporation and not otherwise.

The Public Works Loans Act, 1892 (55 & 56 Vict. c. 61), s. 8, declares that the Commissioners of Public Works in Ireland shall be a body corporate by that name, with perpetual succession and a common seal, and with power to hold lands for the purposes of their duties, and that all contracts or securities heretofore made with or given by [? to] them or their secretary shall be deemed to be made with or given to them as such body corporate, and not otherwise.

By sect. 5 of the Act of 1869, the Commissioners so incorporated by that Act are to be entitled to the benefit of all covenants and agreements relating to the lands so vested in them, and to maintain all actions, suits and other proceedings founded upon them in their own name as such corporation, and are similarly to be liable for all payments, covenants and agreements in respect of such lands, and their secretary is to be discharged from all liability, but existing legal proceedings are not to be affected.

It is not at all clear from these provisions that the corporation can be sued otherwise than through its secretary, though a limited power of suing as a corporation is conferred upon it.

The Public Works Loans Act, 1888 (51 & 52 Vict. c. 37), s. 7, makes a certificate purporting to be under the common seal of the Commissioners evidence that the sum stated therein to be due to them from any person named therein, or to be charged on any property named therein, is so due or so charged.

The whole position of the Commissioners is discussed in *Wheeler v. Commrs. of Public Works in Ireland*, [1903] 2 I. R. 202. That case decided by a majority (Palles, C.B., dissenting) that the Commissioners, in so far as their position and duties under the St. Stephen's Green Act, 1877 (40 & 41 Vict. c. cxxxiv.), were concerned, were not servants of the Crown, and that although they were in possession of no funds under the Act, and obtained none from the property vested in them under the Act, and were dependent on moneys provided by Parliament for the carrying out of their duties under it, yet they were liable for damages for negligence in a suit brought against them in their corporate capacity by the injured person.

The opinion of the majority of the Court really rested upon the view that St. Stephen's Green had not been in any sense Crown property before it became vested in the Commissioners, and that as owners of that estate they must be regarded as standing in the same position as the previous Commissioners, who were in no sense servants

of the Crown. Palles, C.B., on the other hand, thought that, by the vesting of the property in the Commissioners, it was intended that they should maintain it, whatever its previous character, at the expense of the Crown, and in their actual capacity of servants of the Crown. The case, therefore, does not have a wide bearing outside its particular circumstances.

The basis of the decision is clearly seen if it be contrasted with the earlier case of *Murphy v. Soady* (1886), reported [1903] 2 I. R. 213, n. This was an exactly similar action for negligence brought against the Commissioners by their secretary under sect. 91 of the Public Works (Ireland) Act, 1831, though it is not at all clear how that section had any application to the particular case. The property vested in the Commissioners, out of which this action arose, was the Phoenix Park, Dublin, and it was held that in respect of that property the Commissioners were merely agents for the Crown.

Sharpley v. Hornsby (1852), 2 Ir. C. L. R. 590, was an action against the secretary of the Commissioners for damages for injury to the plaintiff's mill done in the exercise of their powers as a drainage authority, and it was held to lie, on the ground that they were merely a body acting for public purposes. Compare the similar decision with regard to the Commissioners as Commissioners of Kingstown Harbour in *Campbell v. Hornsby* (1872), Ir. R. 6 C. L. 37; 7 C. L. 82; and in *Burrell v. Tuohy*, [1898] 2 I. R. 271.

See further on this subject the somewhat parallel cases as to the Corporation of Trinity House below, p. 104.

The Public Works Loan Commissioners.

This body was constituted by the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), s. 4, to hold office for five years, or for such period as is authorised by any Act appointing them. The most recent Act is the Public Works Loans Act, 1905 (5 Edw. VII. c. 22), which appoints certain Commissioners to hold office until April 1st, 1911.

By sect. 5 of the Act of 1875, the Loan Commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit, in law or equity, brought or commenced by or against the said Commissioners in the name of their secretary for the time being, shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said Commissioners; but the secretary to the said Commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit, as the case may be.

Sect. 24 provides that when the Commissioners have taken possession of any property under the Act, or exercised the powers conferred by the Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys, which, but for their wilful act or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands.

By sect. 33, every sum payable under any security made in pursuance of the Act shall be made payable to the use of Her Majesty, her heirs and successors, and may be recovered as a specialty debt due to the Crown under 33 Hen. VIII. c. 39 (see below, p. 147).

By sect. 48, service on the Commissioners may be effected by service on their secretary, or by sending to or delivery at their office.

The Paymaster-General.

"The Office of His Majesty's Paymaster-General" was constituted by the Paymaster-General Act, 1835 (5 & 6 Will. IV. c. 35), and developed by the Paymaster-General Act, 1847 (11 & 12 Vict. c. 55), and other Acts. No general power to sue is given to this official, nor is he liable to be sued; but see below, p. 103, as to his power to sue on behalf of the Commissioners of Chelsea Hospital.

Under the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 5, the Consolidated Fund is liable to make good all moneys and securities paid or transferred into Court or vested in the Paymaster-General under the Act.

If the Lord Chancellor, either with or without a representation made to him by any suitor, certifies to the Treasury in writing that the Paymaster-General has failed to pay any money or transfer any securities in Court required by order of the Court to be paid or transferred, or has been guilty of any default with respect thereto, the Treasury are to cause the sum so certified to be paid out of the growing produce of the Consolidated Fund into the Bank of England to the credit of the Paymaster-General for the time being, for and on behalf of the Supreme Court of Judicature. (See the Supreme Court of Judicature (Funds, &c.) Act, 1883 (46 & 47 Vict. c. 29), s. 2.)

The reported authorities dealing with this matter are: *Jones v. Jones* (1879), reported [1901] 1 Ch. 464, n.; *Slater v. Slater* (1888), reported [1897] 1 Ch. 222, n.; *Marsh v. Joseph*, [1897] 1 Ch. 213; 66 L. J. Ch. 128; and *Bath v. Bath*, [1901] 1 Ch. 460; 70 L. J. Ch.

270. The practice now is to present a petition in the action or matter praying for an order directing the Paymaster-General or the Treasury to replace the missing sums to the credit of the action or matter. This petition is served on the Paymaster-General and the Treasury Commissioners. It would only be on the failure of the Paymaster-General or the Treasury to comply with such order that recourse to the Lord Chancellor would be necessary. *Slater v. Slater and Marsh v. Joseph* are also concerned with claims made by the Crown for an indemnity against the person whose default actually caused the loss. In *In re Dangar's Trusts* (1889), 41 Ch. D. 178; 58 L. J. Ch. 315, it was held that the Paymaster-General, or rather his predecessor the Accountant-General and his officials, had not been guilty of any neglect, but an order was made on a solicitor to make good the loss.

The Prison Commissioners.

The Prison Commissioners were appointed as a body corporate with a common seal under that title by authority given to the Crown by the Prison Act, 1877 (40 & 41 Vict. c. 21), s. 6, with power to hold land without licence in mortmain for the purposes of the Act. Their duties include the general superintendence of prisons under the Act, subject to the control of the Secretary of State, the making of contracts, and all other acts necessary for the maintenance of the prisons and prisoners within their jurisdiction. By sect. 48, the legal estate in all prisons and in their effects is vested in them. The Prison Act, 1898 (61 & 62 Vict. c. 41), s. 1, makes them, by virtue of their office, directors of convict prisons.

Nothing is said in the statutes as to actions by or against the Commissioners. In the two reported cases in which they figure as plaintiffs, namely, *Prison Commrs. v. Liverpool Corporation* (1880), 5 Q. B. D. 332; 49 L. J. Q. B. 431; and *Prison Commrs. v. Clerk of the Peace for Middlesex* (1882), 9 Q. B. D. 506; 51 L. J. Q. B. 433, the question was not raised. *Gorton L. B. v. Prison Commrs.* (1887), reported [1904] 2 K. B. 165, n.; 73 L. J. K. B. 114, n., was a case stated in a criminal matter.

By sect. 17 of the Prison Act, 1877, any sum payable by a prison authority in pursuance of that section shall be deemed to be a debt due from that authority to the Crown, and may be recovered accordingly.

For the possible personal liability of Prison Commissioners, compare *Cobbett v. Grey* (1849), 4 Ex. 729; 19 L. J. Ex. 137, above, p. 23.

As to costs, in *Prison Commrs. v. Clerk of the Peace for Middlesex, ubi sup.*, the Court awarded the Commissioners costs, without argument,

as appears by the transcript of the shorthand notes, and the Crown insisted upon their right to such costs. *See quare*, whether this was correct on the general principle (see below, p. 613).

The Prison Commissioners for Scotland.

This body was appointed by the Crown under authority given by the Prisons (Scotland) Act, 1877 (40 & 41 Vict. c. 53), s. 7, as a body corporate with power to hold land so far as might be necessary for the purposes of that Act, under the above style. The supervision of the Commissioners is now in the hands of the Secretary for Scotland. Their powers are practically identical with those of the English Prison Commissioners, and the legal estate in all prisons and their effects is vested in them (sect. 57). There is no provision that they should sue or be sued.

Under sect. 18 of the Act any sum payable by a prison authority in pursuance of that section is to be deemed to be a debt due from the authority to the Crown, and may be recovered accordingly, subject to allocation as therein provided.

The General Prisons Board for Ireland.

This body was constituted under the General Prisons (Ireland) Act, 1877 (40 & 41 Vict. c. 49), s. 4, as a body corporate under the above title, with a common seal, and with power to acquire and hold land without licence in mortmain, as far as might be necessary for the purposes of the Act. They have similar powers to those of the English Prison Commissioners, including those of directors of convict prisons, the Corporation of Directors of Convict Prisons for Ireland being dissolved. The legal estate in all prisons and the effects thereof is vested in them (sect. 17). There is no statutory provision that they may sue or be sued.

The Ecclesiastical Commissioners and the Church Estates Commissioners.

The Ecclesiastical Commissioners for England were appointed by the Ecclesiastical Commissioners Act, 1836 (6 & 7 Will. IV. c. 77), s. 1, whereby it is provided that certain officials and individuals "shall for the purposes of this Act be one body politic and corporate by the name of 'The Ecclesiastical Commissioners for England,' and by that name shall have perpetual succession and a common seal, and by that name shall and may sue and be sued." They are also given power to hold lands and hereditaments. The Ecclesiastical

Commissioners Act, 1840 (3 & 4 Vict. c. 113), s. 78, adds more officials, and provides for four more appointed members. Sect. 57 gives the Commissioners power to employ all remedies belonging, or which would belong, to any holder of an ecclesiastical office for the recovery of profits, lands and hereditaments vested in them under the Act.

The Ecclesiastical Commissioners Act, 1850 (13 & 14 Vict. c. 94), ss. 1—12, provides for the appointment of three Church Estates Commissioners, in the first of whom are to be vested the estates held in trust for the Ecclesiastical Commissioners, and who are to constitute the Estates Committee of the Ecclesiastical Commissioners, and manage all their property. No power is given to the Church Estates Commissioners to sue or be sued.

By the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 104), s. 1, the powers and property of the Church Building Commissioners were transferred to the Ecclesiastical Commissioners.

In *Gilbert v. Corporation of Trinity House* (1886), 17 Q. B. D. 795; 56 L. J. Q. B. 85, Wills, J., seems to put the Ecclesiastical Commissioners in the same position as the Trinity House (see below, p. 104); but *quære* whether this observation was well considered.

The Ecclesiastical Commissioners frequently sue and are sued in accordance with the power conferred by the Act of 1836. Where they exercise the power to sue given them by sect. 57 of the Act of 1840, cited above, they have the same time within which to enforce their claim as the ecclesiastical officer, whose right of action is transferred to them by that section. (*Ecclesiastical Commrs. of England and Wales (sic) v. Rowe* (1880), 5 A. C. 736; 49 L. J. Q. B. 771; see also *Ecclesiastical Commrs. for England v. Tremer*, [1893] 1 Ch. 166; 62 L. J. Ch. 119.)

As to the power and duty of the Commissioners, by action or otherwise, to see that the powers given by the Ecclesiastical Leasing Acts, 1842 and 1858 (5 & 6 Vict. c. 108, and 21 & 22 Vict. c. 57), are properly applied, see *Ecclesiastical Commrs. v. Pinney*, [1899] 1 Ch. 99; 68 L. J. Ch. 30.

The Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 73, provides that where land proposed to be compulsorily enfranchised is held of a manor belonging to an ecclesiastical corporation, the Ecclesiastical Commissioners shall have notice of the proceedings, and shall have the like power of expressing assent or dissent from the proceedings as is provided by the Act with respect to a person entitled in reversion or remainder.

The Charity Commissioners.

General Observations.

"The Charity Commissioners for England and Wales" were appointed under that style, with a seal, and with powers exercisable by any two of their number, by the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), ss. 1—6. There is no provision under this Act that they may sue or be sued.

Control of the Commissioners over Proceedings with respect to Charities.

By sects. 17, 18 of the Charitable Trusts Act, 1853, notice in writing of any suit, petition, or proceeding for obtaining any relief, order or direction concerning any charity or the property thereof, with such information as the Commissioners require, must be given to the Commissioners; and they may, by an order or certificate signed by their secretary, authorise the proceedings to be taken in such manner and for such objects as they direct, and subject to any provisions for securing the charity against liability to costs or expenses, or they may order the proceedings to be delayed. No Court or judge may entertain such proceedings except upon and in conformity with such order or certificate.

This enactment does not extend to proceedings in which property or relief is sought adversely to any charity, nor to proceedings taken *ex officio* by the Attorney-General, nor is it to affect the necessity of the Attorney-General's fiat or allowance, where such was necessary before the passing of the Act.

By sects. 19, 20, the Commissioners, on a report of an inspector, or if it otherwise appears to them fitting, and, if necessary, after a local inquiry, may authorise proceedings with regard to a charity or its property, without having received any such notice as aforesaid. If the Commissioners think it desirable in any case that proceedings should be instituted by the Attorney-General, they may certify such case under the hand of their Secretary to the Attorney-General, and he may take such proceedings as he thinks proper, either by action or petition in the Chancery Division, or by application to a judge in chambers, or to a County Court under sect. 32 of the Act.

Sect. 34 enables the Commissioners to decide which County Court shall have jurisdiction, in a case of concurrent jurisdiction. By sect. 35, they may direct that the application should be made in the High Court, as if the gross income of the charity exceeded 30*l*. By sect. 36, no order of the County Court appointing or removing a trustee or approving a scheme is to be valid until approved by the Commissioners. By sect. 37, if they are dissatisfied with a decision

of a County Court, they may remit it for reconsideration or submit it to the High Court. By sect. 39, a person desiring to appeal against a decision of the County Court, other than the Attorney-General acting *ex officio*, must give notice in writing within a month to the Court and the Commissioners, and the Commissioners may give a certificate that the appeal is a proper one, and may require security for the costs of the appeal and an indemnity to the charity against the same. The Attorney-General *ex officio* may at any time within three months prosecute an appeal against any such decision without notice or giving security. By sect. 40, any such appeal is to be by petition in Chancery, presented within three months.

Sect. 23, as extended by the Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 31, gives the Commissioners power to approve of compromises or adjustments of claims and matters in suits relating to any charity or the trustees thereof. Sect. 62 excludes certain institutions from the operation of the Act.

By the Charitable Trusts Amendment Act, 1855, s. 40, the Commissioners may order the taxation by the officers of the Court of any bill of costs claimed by any solicitor on account of business conducted by him on behalf of any charity or the trustees thereof.

Appeals from Orders of the Commissioners.

By the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), ss. 8, 9, the Attorney-General or any person authorised by him or by the Commissioners, in the case of any charity, whatever may be its yearly income, and any trustee or person acting in the administration of any charity of which the gross yearly income exceeds 50*l.*, or any two inhabitants of any parish or district in which the same shall be specially applicable, may, within three months after the definite publication of any order of the Commissioners appointing or removing a trustee or trustees, or relating to the transfer or payment of any real or personal estate, or establishing a scheme for the administration of a charity, present a petition in the Chancery Division in a summary way, praying such relief as the case may require. Any schoolmaster or schoolmistress or other officer removed by the Commissioners without the concurrence of the trustees or administrators of the charity or a majority of them, or of a special visitor of the charity, if any, may, within two months of such removal, appeal in like manner.

The Court may require the Commissioners to state their reasons, or may remit the order to them for reconsideration, or may make any other order it thinks fit, including any order as to costs. It may also require security for costs from any party except the Attorney-General.

No person, other than the Attorney-General, may present such a petition without twenty-one days' notice in writing to the Commissioners.

The Attorney-General, or any person authorised by him or the Commissioners, may appear as respondent upon such appeal, and the Court may make any order respecting the costs of the Attorney-General or other respondent.

The above provisions are very clumsily and circuitously cut down by the Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), s. 10, the effect of which appears to be to restrict the power of appeal in all cases to the Attorney-General and persons authorised by him or by the Commissioners, in addition to the schoolmasters, schoolmistresses and other officers above mentioned. By sect. 11 of the same Act no such petition shall be presented before the expiration of twenty-one days after written notice has been given by the appellant to the Attorney-General by delivery of the same to the Treasury Solicitor.

Under the Local Government Act, 1894 (56 & 57 Vict. c. 75), s. 70 (2) (3), if any question arises or is about to arise under the Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court within three months. The appeal is to be prosecuted as provided in the sections already set forth.

An appeal shall, with the leave of the High Court or Court of Appeal, lie to the Court of Appeal against any decision under this section.

In London, by the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 23 (5), the same provisions are applied.

Where the Commissioners have made an order or a scheme with respect to the property of a dissolved corporation, then by sect. 8 (4) of the Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), any corporation or person directly affected may appeal to the Privy Council, and in such a case no appeal lies to the Chancery Division. The appeal, however, by sect. 9 (4) is to the Chancery Division, as under sect. 8 of the Charitable Trusts Act, 1860, and not to the Privy Council, where a question arises as to whether anything is property within the meaning of the Act, or as to whether anything is vested in the Official Trustees, or any body corporate or persons as provided in the Act.

Applications to the Court with respect to Charities.

By sect. 28 of the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), where the appointment or removal of any trustee, or any other relief, order, or direction relating to any charity, of which the gross annual income exceeds 30*l.*, shall be considered desirable, any person authorised in that behalf by the order or certificate of the Commissioners, or the Attorney-General, may apply at chambers in the Chancery Division by summons (Ord. LV. r. 13), and the Court may make such order as it thinks fit. By the same section, as amended by Ord. LV. r. 14, no such order shall be subject to appeal where the gross annual income of the charity has not been declared by the Commissioners to exceed 100*l.*, unless the judge certifies that an appeal ought to be permitted either absolutely or upon terms.

Recovery of Property belonging to Charities.

By the Charitable Trusts (Recovery) Act, 1891 (54 & 55 Vict. c. 17), s. 3, where it appears to the Commissioners that any action, petition, or other proceeding should be instituted for the recovery of any property, the gross annual income of which, in their opinion, does not exceed 20*l.*, and which appears to them to belong to a charity, they may, with the sanction of the Attorney-General, themselves institute such proceedings on behalf of the charity, and their costs shall be paid as if they were those of the Attorney-General in a charity matter.

As to such costs, see below, p. 621.

By sect. 4, the proceedings are to be instituted in the name of the Charity Commissioners for England and Wales, and not in the names of the individual Commissioners, and shall not abate or become defective owing to any change of Commissioners.

For the purpose of such proceedings any document may be served on them by being addressed to them, and delivered at or posted to their office, or by being served on their secretary.

By sect. 5, old printed reports of the Commissioners are admissible as evidence on due notice. The making of any periodical payment in respect of any land to or for the benefit of any charitable purpose for twelve consecutive years is to be deemed *prima facie* evidence of the perpetual liability of the land to such payment, and no proof of the origin of the payment shall be necessary.

By the R. S. C. (Charitable Trusts Recovery) 1892, made under sect. 6 of the Act, proceedings by the Commissioners may be by originating summons (Rule 2). The trustees or administrators of the charity, or the Official Trustee of Charity Lands, or the Official

Trustees of Charitable Funds need not be made parties, unless the Court so orders, and the Commissioners are to be deemed to represent all parties interested (Rule 3).

Notice under sect. 5 of the Act is to be a two days' notice in writing, and must be served on the opposite party or his solicitor, but the Court may order shorter, or substituted, or other notice, and the notice may be given before appearance (Rule 4).

Any order for production of documents, or other discovery against the Commissioners, must be made against their secretary (Rule 5).

Reported instances of proceedings under these sections are *In re Robert Gwynne's Charity, Charity Commrs. v. Moulden* (1894), 10 T. L. R. 428; *In re Greenwich Herbage Rents Charity, Charity Commrs. v. Green*, [1896] 2 Ch. 811; 65 L. J. Ch. 871; *In re White's Charities, Charity Commrs. v. London Corporation*, [1898] 1 Ch. 659; 67 L. J. Ch. 430; and *In re Alms Corn Charity, Charity Commrs. v. Bode*, [1901] 2 Ch. 750; 71 L. J. Ch. 76. In the first and last of the above cases old reports of the Commissioners were put in evidence under sect. 5 of the Act, verified by an affidavit of their secretary.

Roman Catholic Charities.

By the Roman Catholic Charities Act, 1860 (23 & 24 Vict. c. 134), s. 1, no gift upon any lawful charitable trust for the exclusive benefit of Roman Catholics is to be invalidated by reason only that the estate is also subjected to any superstitious or prohibited trust; but the Court, on application by the Attorney-General, or by the Charity Commissioners, if applied to by the administrators of the estate or a majority of them, or by a person authorised by the certificate of the Commissioners, may apportion the estate or its income, so that a portion may be exclusively subject to the lawful charitable trusts declared by the donor or settlor, and the residue may become subject to such lawful charitable trusts for the benefit of Roman Catholics as the Court thinks fit. The section does not apply, of course, where the estate is wholly subject to superstitious trusts. (*In re Blundell's Trusts* (1861), 30 Beav. 360.)

The Official Trustee of Charity Lands.

By sect. 15 of the Charitable Trusts Amendment Act, 1855, amending sect. 47 of the Charitable Trusts Act, 1853, the secretary of the Charity Commissioners for the time being shall be a corporation sole by the name of "The Official Trustee of Charity Lands" for taking and holding charity lands, and by that name shall have perpetual succession. As having such lands vested in him, he will be a proper

party in certain cases to Chancery proceedings affecting such lands, such, for instance, as *Fell v. Official Trustee of Charity Lands*, [1898] 2 Ch. 44; 67 L. J. Ch. 385. As to his not being a necessary party to proceedings under the Charitable Trusts (Recovery) Act, 1891, see above, p. 93. By sect. 50 of the Charitable Trusts Act, 1853, he is to be deemed, subject to any order of the Court or a judge, to be a bare trustee, and the administrators of the charity are to have the possession and control of the trust estates and apply the income as if such estates were vested in them.

The Official Trustees of Charitable Funds.

The Official Trustees of Charitable Funds are declared, by sect. 18 of the Charitable Trusts Amendment Act, 1855, superseding earlier provisions, to have perpetual succession by that name, and to have power to hold by that name stock in the public funds, and stock and shares of any public company, securities and moneys. By sect. 25, a transfer of securities may only be made to them, and money, other than dividends and interest on the securities held by them, may only be paid to their account, by an order of the Court or a judge of the Chancery Division or a County Court, or of the Charity Commissioners; and no transfer of stock, shares or securities may be made by them except by an order of such Court or judge, or by a duly authenticated order signed by two of the Commissioners. By the Charitable Trusts Act, 1860, s. 17, they are not accountable for any loss, unless due to their own wilful act or default. They are not a necessary party to proceedings under the Charitable Trusts (Recovery) Act, 1891. (See above, p. 93.) They are, indeed, mere depositaries of the legal ownership of the funds in their charge, and should never be made parties to suits for the administration of charities, being, in fact, bare trustees. This may be inferred from the judgments in *Llanbadarnfawr School Board v. Official Trustees of Charitable Funds*, [1901] 1 K. B. 430; 70 L. J. K. B. 307.

The Governors of Queen Anne's Bounty.

The Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy were incorporated by Letters Patent, dated November 3rd, 1704 (printed in Hodgson's Account of Queen Anne's Bounty, p. 102), in virtue of a power conferred upon the Crown by sect. 1 of 2 & 3 Ann. c. 20 (c. 11, Ruff.). The Letters Patent enable them to sue and be sued in any Court, and they have frequently appeared as parties in proceedings relating to the property vested in them. (See *In re Harris, Jacson v. Governors of Queen Anne's Bounty* (1880), 15 Ch. D. 561; 49

L. J. Ch. 687; *In re Duke of Marlborough and Governors of Queen Anne's Bounty*, [1897] 1 Ch. 712; 66 L. J. Ch. 323. In *Taylor v. Smith* (1903), not reported, the Governors were cited as legatees and put in a defence, supporting the will propounded by the plaintiffs. So, again, they appeared in *Lidbetter v. Hatch*, [1907] 1 Ch. 404; 76 L. J. Ch. 202.

Bishop of Rochester v. Le Fanu, [1906] 2 Ch. 513; 75 L. J. Ch. 743, was an action instituted with the assent and at the request of the Governors against their treasurer in his capacity of collector of first fruits and tenths in order to determine whether, on the avoidance of a see, the annual sums payable in lieu or in respect of first fruits and tenths were apportionable in favour of the incoming bishop, either as against his predecessor or as against the said collector. The case discusses the manner in which payment of such first fruits and tenths is enforceable, namely by writ of extent.

The Commissioners of Charitable Donations and Bequests for Ireland.

The body which is so entitled was constituted of three (afterward two) judges, and ten (afterwards eleven) other proper and discreet persons with perpetual succession and a common seal by the Charitable Donations and Bequests (Ireland) Act, 1844 (7 & 8 Vict. c. 97), s. 2. That section also enacts that they may sue and be sued by the above name. By sect. 12, they may sue for the recovery of every charitable donation, devise, or bequest withheld, concealed, or misapplied, and shall apply the same to charitable and pious uses, after deducting their costs and expenses; but all such proceedings must be by leave of the Attorney- or Solicitor-General for Ireland.

By the Charitable Donations and Bequests (Ireland) Act, 1867 (30 & 31 Vict. c. 54), s. 4, notice in writing of any legal proceedings as to any charity by any person except the Attorney-General is to be given to the Commissioners. By sect. 5, they may authorise the taking of any proceedings which they think proper, and if they think such proceedings ought to be taken by the Attorney-General, they must give a written certificate to that effect, and the Attorney-General will take such proceedings as he thinks proper. Sect. 22 exempts the Commissioners and their officers from personal liability, and provides that their costs and expenses may be paid from the charity funds in respect of which they were incurred.

By the Charitable Donations and Bequests Act (Ireland), 1871 (34 & 35 Vict. c. 102), s. 8, they may recover by civil bill charitable donations and bequests, not exceeding 50% principal or 20% arrears of annual payment, without leave of a Law Officer. By sect. 9, they may

recover any such sum not exceeding 200*l.* by petition in Chancery. Sect. 10 gives them power to apply by petition in Chancery with respect to any charity under the Charities Procedure Act, 1812 (52 Geo. III. c. 101), or other Act authorising an application under that Act.

Sect. 7 enables them to proceed by petition in Chancery where it is found unlawful or impracticable to apply any charitable donation or bequest according to the donor's intention, but a month's previous notice of their intention must be given by them, and they must receive and consider all objections and suggestions on the matter.

The Public Trustee.

By the Public Trustee Act, 1906 (6 Edw. VII. c. 55), the office of Public Trustee is established (sect. 1). He is to be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under that name like any other corporation. Sect. 2 provides for his acting as therein provided, and that he shall have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the Court, as a private trustee acting in the same capacity.

Under sect. 3 (4), rules are to be made (see sect. 14) for enabling the Public Trustee to take the opinion of the High Court on any question arising in the course of any administration without judicial proceedings, and otherwise for making the procedure under the section simple and inexpensive; and by sect. 3 (5), in administration proceedings, where the Court thinks that the estate, by reason of its small value, can be more economically administered by the Public Trustee, it may so order. The rules so made are the Public Trustee Rules, 1907 (see, in particular, Rule 17).

Where the Public Trustee acts as custodian trustee under sect. 4, such trusteeship may be terminated by order of the Court on the application of the custodian trustee, of any of the managing trustees, or of any beneficiary, as therein mentioned (sect. 4 (2) (i)).

Probate is provided for by sect. 6, whereby, if the Public Trustee is authorised by any rule under the Act (see Rule 7) to accept probate or letters of administration, the Court having jurisdiction may grant such probate or letters to him, subject to the provisions of that section, and the Court may also transfer probate or administration from an executor or administrator to the Public Trustee.

By sect. 10, a person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the Court, which may make such order as it thinks just. Subject to Rules of

Court, such an application is to be made to a judge of the Chancery Division in Chambers.

Sect. 11 (3) provides for the attendance at any Court or place of prescribed persons on behalf of the Public Trustee, save for the performance of acts which could only be done by a barrister or solicitor, and sect. 12 extends the provisions of the Act to Palatine Courts.

Fees are governed by the Public Trustee (Fees) Order, 1907.

The Commissioners in Lunacy.

These Commissioners were originally appointed by the Lunacy Act, 1845 (8 & 9 Vict. c. 100), s. 3, and their office was confirmed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 150. It appears that they can neither sue nor be sued as such.

The General Board of Commissioners in Lunacy for Scotland.

This body was constituted by the Lunacy (Scotland) Act, 1857 (20 & 21 Vict. c. 71), s. 4.

By sect. 72, if there is neglect in the execution of the Act, or if any obstruction arises in the execution of the Act, the Board may apply by summary petition to the Court of Session, which may make such order as shall seem just and necessary for the execution of the purposes of the Act.

By sect. 111, the Board may enforce the provisions of the Act by summary application to the Court of Session, or to any Sheriff Court having jurisdiction over the respondent in such application, and it shall not be necessary to proceed by way of ordinary action.

By the Lunacy (Scotland) Act, 1862 (25 & 26 Vict. c. 54), s. 9, the Board may represent any failure to provide adequate asylum accommodation in any district to one of Her Majesty's Principal Secretaries of State [now the Secretary for Scotland], and he, after considering the representations of the district board, may authorise the Board to apply to the Court of Session by summary petition in common form, and the Court may appoint a person at whose sight and instance the powers and duties of the district board relative to the providing of such accommodation shall be performed, at the expense of the district board.

By the Lunacy (Scotland) Act, 1866 (29 & 30 Vict. c. 51), s. 21, all penalties are recoverable by the Board without prejudice to their right to enforce specific implement of the matters in respect of which the penalties have been incurred, and such penalties may be sued for by the secretary of the Board before the sheriff or any Court having jurisdiction, and that either in any application to enforce such specific implement, or separately on summary complaint.

Sect. 8 of the Act of 1857 and sect. 23 of the Act of 1866 exempt the Commissioners from personal responsibility for anything done *bonâ fide* in execution of the Acts.

The Congested Districts (Scotland) Commissioners.

These Commissioners were appointed under the Congested Districts (Scotland) Act, 1897 (60 & 61 Vict. c. 53), s. 1. There is no statutory provision which permits them to sue or be sued.

The Congested Districts Board for Ireland.

This Board came into existence under the Purchase of Land (Ireland) Act, 1891 (54 & 55 Vict. c. 48), s. 34, which was amended by the Irish Land Act, 1903 (3 Edw. VII. c. 37), s. 84.

The Public Works Loans Act, 1892 (55 & 56 Vict. c. 61), s. 4, gives the Board all such powers and remedies as are possessed by the Commissioners of Public Works in Ireland for the recovery of the moneys placed at their disposal by sect. 35 of the Purchase of Land (Ireland) Act, 1891; and provides that the certificate of their secretary shall have the same effect in that behalf as a certificate under the seal of the Commissioners (see above, p. 84).

The Congested Districts Board (Ireland) Act, 1901 (1 Edw. VII. c. 34), s. 1, amended by the Irish Land Act, 1903 (3 Edw. VII. c. 37), s. 82, provides for applications to the County Court by tenants dissatisfied with new holdings provided by the Board, and the ordering of compensation to be paid or improvements to be made by the Board as the Court thinks reasonable. The Court may also order that charges, liabilities, and equities affecting a tenant's former holding shall continue to affect it, or be transferred to his new holding. The decision of the Court is to be final, and any notice under the section determining a tenancy may be enforced by a writ of possession of the Court, subject as therein mentioned. The section also provides for the awarding of costs, the service of notices, the settlement of any conflict of jurisdiction between County Courts, and the making of rules for procedure.

Sect. 2 confers on the Board, and persons authorised by them, the right to enter upon a holding during the continuance of a statutory term conferred on a landlord by the Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 5 (5), in respect of any holding, not subject to a statutory term, which is situate upon land purchased by the Board; and for enforcing this right the Board is to have the like remedies as in the case of a holding subject to a statutory term.

The Irish Land Act, 1903 (3 Edw. VII. c. 37), s. 77, provides for the purchase of estates by the Board from the Land Judge.

The Irish Land Commission and the Estates Commissioners.

This Commission was constituted as a body corporate, under the above title, with a common seal, and a capacity to acquire and hold land for the purposes of the Act, by sects. 41, 42 of the Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49). As successors for certain purposes of the Commissioners of Public Works in Ireland, they have power, under sect. 49 of the Landlord and Tenant (Ireland) Act, 1870 (33 & 34 Vict. c. 46), to recover annuities created in pursuance of that Act in the manner in which rentcharges in lieu of tithes are recoverable in Ireland. Such annuities may also be recovered by or in the name of the Attorney-General for Ireland. These provisions are extended to rents and profits of land agreed to be purchased by them, together with interest on the purchase-money, and also to arrears of rent due at the date of the purchase, by the Irish Land Act, 1903 (3 Edw. VII. c. 37), s. 18.

By the Purchase of Land (Ireland) Act, 1885 (48 & 49 Vict. c. 73), s. 4, as amended by the Land Law (Ireland) Act, 1887 (50 & 51 Vict. c. 33), s. 18, they may exercise the powers conferred on mortgagees by sects. 19, 21, and 22 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), in respect of advances made by them under the Land Law (Ireland) Acts.

By sect. 25 of the Purchase of Land (Ireland) Act, 1891 (54 & 55 Vict. c. 48), whenever they are entitled to cause any holding to be sold for the non-payment of any sum due to them they may, if they think fit, apply to the High Court for an order to the sheriff to put them in possession of such holding, and the Court may thereupon issue an order, which shall be executed by the sheriff in like manner as a writ for the delivery of possession. The application must be made in manner prescribed by Ord. XLVII. rr. 14—22, of the Rules of the Supreme Court (Ireland), 1891.

Further, the Irish Church Act Amendment Act, 1881 (44 & 45 Vict. c. 71), s. 2, transferred to them all the property and powers of the Commissioners of Church Temporalities in Ireland, a corporation which was thereby dissolved, including the right to maintain all actions, suits, and other proceedings grounded thereon in their own name, and the power to proceed upon any obligation, security, or chose in action vested in the Commissioners. (See *Irish Land Commission v. Doherty* (1892), 29 L. R. Ir. 185; *Jordan v. Irish Land Commission* (1893), 27 I. L. T. News. 647; *Commrs. of Church Temporalities in Ireland v. Grant* (1884), 10 A. C. 14.)

The Irish Land Act, 1903 (3 Edw. VII. c. 37), s. 12 (2), confers on them the powers of the Congested Districts Board for facilitating

re-sales under sects. 1, 2 of the Congested Districts Board (Ireland) Act, 1901 (1 Edw. VII. c. 34), as amended by the Act. (See above, p. 99.)

As to the Estates Commissioners, see the Irish Land Act, 1903, s. 23, and the Evicted Tenants (Ireland) Act, 1907 (7 Edw. VII. c. 56), s. 16.

The Registrar of the Office of Land Registry.

This official is appointed under sect. 106 of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87). Under sect. 7 of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), where any error or omission is made in the register, or where any entry in the register is made by or in pursuance of fraud or mistake, and such error or omission or entry cannot be rectified under the Act of 1875, any person suffering loss thereby shall be entitled to be indemnified. The Registrar may, if the applicant desires it, and subject to an appeal to the Court, determine whether a right to indemnity has arisen, and, if so, award indemnity. On an appeal the applicant shall not be required to pay any costs except his own, even if unsuccessful, unless the Court shall consider that the appeal is unreasonable. Where indemnity is paid for a loss, the Registrar, on behalf of the Crown, shall be entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his act, neglect or default.

In *A.-G. v. Odell*, [1906] 2 Ch. 47; 75 L. J. Ch. 425, an appeal by the Crown from an award of indemnity by the Registrar was brought by summons taken out in the Land Registry by the Attorney-General on behalf of the Assistant Paymaster-General for Supreme Court Business and the Comptroller-General of the National Debt Office, they being the official trustees in whom the indemnity or insurance fund constituted under the Act of 1897 is vested. A preliminary objection was taken that the Attorney-General had no *locus standi*, inasmuch as the right of appeal was given only to the "applicant." It was held that an appeal lay either by the Crown or by the applicant, though it must be submitted that the words of the section seem to be against this interpretation. It was further said that, upon the hearing by the Registrar of any application for indemnity, both the applicant and the Crown should be made parties to the proceedings and be represented before him, the Crown being either represented by the Attorney-General or the trustees of the fund, but preferably, as in the case in question, by the Attorney-General on behalf of the trustees.

The Registry of Friendly Societies.

Under sect. 12 of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), an appeal lies from the Chief Registrar (following an appeal to

him from the assistant registrars for Scotland or for Ireland, in the case of those countries) to the High Court in England and Ireland or the Court of Session in Scotland, as the case may be. It has been suggested that the appeal from the Chief Registrar would be by way of mandamus; *sed quere*.

Fines imposed under the Act are recoverable in a Court of summary jurisdiction at the suit of the Chief Registrar or of any assistant registrar, or of any person aggrieved. (Friendly Societies Act, 1896, s. 91.)

The Comptroller-General of Patents, Designs, and Trade Marks.

The Comptroller-General may be a party to appeals against his decisions to the Law Officers, the Board of Trade, or the Court, as the case may be, under the Patents and Designs Act, 1907 (7 Edw. VII. c. 29), and the Trade Marks Act, 1905 (5 Edw. VII. c. 15). See also the Trade Marks Rules, 1906, r. 129; the Patents Rules, 1908, r. 113; the Designs Rules, 1908, rr. 95—97, and *In re Klaber and Steinberg's Patent*, [1908] W. N. 50, 57.

In cases before the Law Officers, it is the practice that the Comptroller should neither pay nor receive costs (*In re Lake's Patent* (1887), Griff. L. O. C. 17), and in appeals to the Court the Court has no jurisdiction to give costs against the Comptroller, and even a successful appellant may be ordered to pay the Comptroller's costs as well as his own. (*In re Rotherham's Trade Mark* (1880), 14 Ch. D. 585; 49 L. J. Ch. 511; *In re Colman's Trade Mark Application*, [1894] 2 Ch. 115; 63 L. J. Ch. 403; but see the expression of opinion of the House of Lords in *Eastman Photographic Materials Co., Ltd. v. Comptroller-General of Patents, Designs, and Trade Marks*, [1898] A. C. 571, at p. 585, not reported on this point in 67 L. J. Ch. 628.) By sect. 48 of the Trade Marks Act, 1905 (5 Edw. VII. c. 15), in all proceedings before the Court under the Act the costs of the Comptroller-General are in the discretion of the Court, but he shall not be ordered to pay the costs of any other of the parties. Thus he was given his costs in *In re "Apollinaris" Trade Mark*, [1907] 2 Ch. 178; 76 L. J. Ch. 437; *In re Birmingham Small Arms Co.'s Application*, [1907] 2 Ch. 396; 76 L. J. Ch. 571, and *In re United States Playing Card Co.'s Application*, [1908] 1 Ch. 197.

The Commissioners of Chelsea Hospital.

By sect. 35 of the Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo IV. c. 16), all actions and suits brought by or on behalf of the Commissioners of the Royal Hospital at Chelsea may be brought in the name of the Treasurer or Deputy-Treasurer or Secretary of

the Hospital for the time being, and the general acting of the Commissioners and the officials named above shall be deemed sufficient proof of their due appointment.

The office of Treasurer of the Hospital was abolished, and all its powers and duties were transferred to the Paymaster-General by the Paymaster-General Act, 1835 (5 & 6 Will. IV. c. 35), ss. 1, 2, 7, and therefore an action on behalf of the Commissioners could now be brought in the name of the Paymaster-General. In the Scottish case of *Mackie or Mackin v. L. A.* (1898), 25 R. 769, the plaintiff sought to recover from the Crown, by proceedings against the Lord Advocate, a pension which he alleged to have been wrongfully declared forfeited by the Commissioners.

The Royal Patriotic Fund Corporation.

This body was established as a body corporate under that name, with perpetual succession and a common seal, and power to acquire and hold lands without licence in mortmain by the Patriotic Fund Reorganisation Act, 1903 (3 Edw. VII. c. 20), s. 1. They succeeded the Commissioners of the Patriotic Fund established by commission under the Sign Manual and under the Patriotic Fund Act, 1867 (30 & 31 Vict. c. 98), which Act (s. 15) gave the Official Trustees of the Patriotic Fund power to institute and defend actions. The present body is not expressly given such powers, but in view of their duties, as set forth in the schedule to the Act of 1903, it would seem probable that they are not in such a position as to be exempt from being sued. *Royal Commrs. of the Patriotic Fund v. Wandsworth Corporation* (1903), 88 L. T. 865, was merely a case stated in a rating appeal.

The Metropolitan Police.

The Metropolitan Police, unlike police forces in other parts of the country, partakes of the nature of a Government Department. A portion of the expenses of the force is paid out of moneys provided by Parliament, and the payments made in respect of the force are subject to the directions of the Home Secretary. The Commissioner of Police of the Metropolis and the Assistant Commissioners are appointed by the Crown by warrant under the Sign Manual, and the Commissioner acts under the immediate authority of the Home Secretary. An annual statement as to the force employed has to be made to Parliament under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 9. Actions by and against the force and its property are taken by and against "The Receiver for the Metropolitan Police District." By the Metropolitan Police (Receiver) Act, 1861 (24 & 25

Vict. c. 124), s. 1, the person holding the office for the time being is constituted a corporation sole, under the title already mentioned, with perpetual succession, and with a capacity by his official name to acquire and hold lands, securities and personal property of every description, and to sue and be sued. Sect. 3 exempts him from personal liability for any debt incurred or engagement entered into by him by his official name in his official capacity, and provides that all such debts and engagements shall be satisfied out of the moneys for the time being received by him in his official capacity.

The property of the force had been vested in him much earlier by the Metropolitan Police Act, 1829 (10 Geo. IV. c. 44), s. 16, which, like sect. 5 of the Act of 1861, gives him power to dispose of any of such property by the direction of the Home Secretary. Later Acts have extended his powers as to holding property. (See Archibald's *Metropolitan Police Guide* (ed. 4), pp. 16, 129, 130.)

By sect. 15 of the Act of 1829, the Receiver for the time being may, in his own proper name only or by his name and description of office, sue the executors or administrators of a Receiver, who has died while in office, to recover all sums of money which remained in his hands as such, or the executors or administrators of such executors or administrators. The Court may order the account in dispute to be audited by any officer or person and proceed on his report. In any proceedings under the Act by a Receiver, proof of his acting as such shall be sufficient evidence of his holding the office, in the absence of proof to the contrary.

By the Metropolitan Police (Receiver) Act, 1867 (30 & 31 Vict. c. 39), s. 1, his accounts have to be laid annually before Parliament.

For an instance of an action by the Receiver see *Receiver for the Metropolitan Police District v. Bell* (1872), L. R. 7 Q. B. 433; 41 L. J. M. C. 153, which was a claim by him to a moiety of certain fines under the Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 47, by action against the clerk to certain justices.

The Receiver may also be sued, as representing the police authority of the Metropolitan District, for compensation under the Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 4, as in *Gunter v. Receiver for the Metropolitan Police District* (1888), 53 J. P. 249; and *Field v. Receiver for the Metropolitan Police District*, [1907] 2 K. B. 853; 76 L. J. K. B. 1015.

The Corporation of the Trinity House.

This body is not strictly a Government Department, but this very fact makes it interesting by contrast. It performs the functions of a

Government Department, but suffers from, or enjoys, the incidents of a private corporation. "The master, wardens, and assistants of the guild, fraternity or brotherhood of the most glorious and undivided Trinity and of St. Clement in the parish of Deptford Strond, in the county of Kent, commonly called the Corporation of the Trinity House of Deptford Strond" (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742), are by that Act entrusted with the organisation of pilotage (sects. 616—631), together with the lesser corporations of the Trinity Houses in Kingston-upon-Hull and Newcastle-upon-Tyne. There are vested in them, moreover, by sect. 634, all lighthouses, buoys, and beacons in England and Wales, the Channel Islands, and the adjacent seas and islands, and at Gibraltar; and sects. 635—642 provide for their general control over them.

Yet, even when they are performing the functions so bestowed upon them, they are not to be regarded as servants of the Crown so as to exempt them from liability to an action for negligence in the performance of their duties, *e.g.*, the removal of an old beacon. (*Gilbert v. Corporation of Trinity House* (1886), 17 Q. B. D. 795; 56 L. J. Q. B. 85.) In an earlier case, *Lords Bailiffs-Jurats of Romney Marsh v. Corporation of the Trinity House* (1872), L. R. 5 Ex. 204; L. R. 7 Ex. 247; 41 L. J. Ex. 106, they were held liable for damage to a sea-wall negligently caused by one of their pilot cutters. The point as to non-liability raised in the later case was not taken. The Trinity House, then, can sue and be sued like an ordinary corporation, as in *Trinity House Corporation v. Staples* (1777), 2 Chit. 689; *Trinity House v. Sorsbie* (1790), 3 T. R. 768; *Richmond Hill Steamship Co. v. Corporation of Trinity House*, [1896] 2 Q. B. 134; 65 L. J. Q. B. 561; *Cairn Line of Steamships, Ltd. v. Corporation of Trinity House*, [1908] 1 K. B. 528; 76 L. J. K. B. 377, and other cases.

The same observation applies to the lesser Houses in Hull and Newcastle.

The Commissioners of Northern Lighthouses and the Commissioners of Irish Lights.

Lighthouses, buoys and beacons in Scotland, the adjacent seas and islands, and the Isle of Man, and in Ireland and the adjacent seas and islands respectively, are vested in these two sets of Commissioners by the Merchant Shipping Act, 1884, s. 634. The former body is constituted as a body corporate by sect. 668 of that Act; the latter body was incorporated by the Dublin Port Act, 1867 (30 & 31 Vict. c. lxxxi.). See sect. 742 of the Merchant Shipping Act, 1894.

It is apprehended that the former of these bodies would be entitled

to the protection to which servants of the Crown are entitled, and is not within the principle of *Gilbert v. Corporation of Trinity House* (see above, p. 105).

As to the latter of these bodies, being, as they are, successors of the Port of Dublin Corporation, in which their present powers were vested under the earlier Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 389, and being, in fact, a body formed by the bisection of the Port of Dublin Corporation, under sect. 2 of the local Act already cited, the case is much more doubtful. The author prefers not to express an opinion, but they probably fall within the reasoning applied to the Corporation of the Trinity House in the judgments in *Gilbert v. Corporation of Trinity House*.

The two reported cases in which the former set of Commissioners were respondents, namely, *Lord Advocate v. Commrs. of Northern Lighthouses* (1874), 1 R. 950, and *Nisbet Hamilton v. Commrs. of Northern Lighthouses* (1886), 13 R. 710, throw no light on the matter.

The Trustees of the British Museum.

This body was incorporated by that name by 26 Geo. II. c. 22, s. 14, which provides that they may sue and be sued. In *De Souza v. Trustees of the British Museum* (1886), 2 T. L. R. 586, which was a motion for an injunction on behalf of a member of the public to restrain the Trustees from excluding him from the reading room of the Museum until he had made a certain apology, Chitty, J., doubted whether the plaintiff had any right to sue, saying that the British Museum was legally a charity, and that no case had been cited to show that a mere outside member of the public, not being an officer of the charity, could bring an action complaining of the administration of the charity. But *quære* whether the complaint was of this nature. It was rather based on an alleged refusal of the Trustees to allow the plaintiff his right of access to the reading room under sect. 20 of 26 Geo. II. c. 22.

It does not appear that the Trustees enjoy any general privileges in respect of actions. *Martin v. Trustees of the British Museum* (1893), 10 T. L. R. 215, 338, where the principal librarian was joined as defendant with the Trustees, was an action on an alleged libel contained in books in the library of the Museum. It was held before the trial that the Trustees were bound to answer interrogatories as to the sources from which they obtained the books. The result of the trial was unsatisfactory, the jury finding that the defendants were not guilty of negligence, but that they did not discharge their duties with proper care, caution and judgment. On that judgment was

given for the defendants, but it would seem to have been a clear case for a new trial.

A.-G. v. Trustees of the British Museum, [1903] 2 Ch. 598; 72 L. J. Ch. 743, was a successful information filed to establish the title of the Crown to certain articles in the possession of the Trustees on the ground that they were treasure trove.

Actions have also been brought against the Trustees for damages for negligence and other matters. A precedent of pleadings in an action against them is printed below, p. 140.

The Board of Trustees for the National Galleries of Scotland.

This Board was first established by the National Galleries of Scotland Act, 1906 (6 Edw. VII. c. 50), s. 3, and superseded the Board of Trustees for Manufactures in Scotland, which was thereby abolished, and whose powers, duties and property were transferred to the new Board by that section and sect. 6, save the Royal Institution, the National Gallery, the National Portrait Gallery, and Dunblane Cathedral, which were vested in the Commissioners of Works by sect. 7, while their management was given to the new Board by sect. 3. See also the National Galleries of Scotland Order, 1907.

Nothing is provided in the Act with regard to actions by or against the new Board. Their powers and duties are to be such, and are to be exercised and discharged in such manner, as may be prescribed by order of the Secretary for Scotland (sects. 2, 3).

The Crown Agents for the Colonies.

The Crown Agents were established primarily to transact business for Crown Colonies. They are not strictly in the position of Government officials, nor are they an integral part of the Colonial Office, though the Secretary of State for the Colonies, as being responsible generally for the good government of the Colonies, appoints them and will exercise supervision over them in matters of importance, or where any principle is involved.

The Government has expressed an opinion that it would be advisable that they should not act for Colonies having responsible government, as this will tend to involve His Majesty's Government, although the latter has no effective control over them. The only self-governing Colony for which they act at present is Newfoundland; and occasionally the agents of the self-governing Colonies appeal to the aid of their experience.

Their business is of a very varied nature, and the form of proceedings to be taken by or against them in any particular case would

depend on the particular facts. If they themselves were to sue or be sued, the proceedings would have to be taken by or against them individually, since they have no corporate or statutory existence, and they would probably be protected on the principles enunciated below, p. 643. See, in particular, *Wright & Co. v. Mills* (1890), 60 L. T. 887; 63 L. T. 186, an action on a contract against the Agent-General of a Colony. The only recent case in which they have been involved in litigation in this country arose out of their position as agents for the Uganda Railway, a work which was constructed out of Imperial funds. It was desired to sue contractors for breach of a contract to deliver rails and fishplates, and, under the circumstances, the action being substantially by and on behalf of the Crown, since the contract was made by the Crown Agents on behalf of the Crown, the proceedings took the form of an information by the Attorney-General for damages for breach of contract. (*A.-G. v. Ebbw Vale Coal and Iron Co., Ltd.* (1901), not reported.)

The Commissioners for the Exhibition of 1851.

This body was incorporated, and may sue and be sued, under the above title by virtue of their charters, dated August 15, 1851, and December 2, 1852, which are printed in the Parliamentary Papers, 1852, Vol. 26, Part 1; 1852—1853, Vol. 54.

Other Government Departments.

There are a number of Government Departments which have not been specifically dealt with, and which appear to have no statutory power or liability to sue or be sued as such, either in the name of the Department or of particular officers thereof. The issue of writs of mandamus, prohibition or certiorari against some of them is dealt with in Chapters III., IV. and V. of this Book.

The principal Departments among them may perhaps be usefully enumerated here.

(i.) *In England*.—The Civil Service Commission, the Exchequer and Audit Department, the Royal Mint, the Heralds' College, the Railway and Canal Commission, the Light Railway Commission, the Public Record Office, the Stationery Office, the Registrar-General, the Registrar of Joint Stock Companies.

(ii.) *In Scotland*.—The Crofters Commission, the Registrar-General, the Lyon Court.

(iii.) *In Ireland*.—The Chief Secretary, the Office of Arms, the Registrar-General, the Registrar of Joint Stock Companies, the Stationery Office, the Royal Irish Constabulary.

CHAPTER II.

MANDAMUS, PROHIBITION AND CERTIORARI ON THE PROSECUTION
OF THE CROWN AND GOVERNMENT DEPARTMENTS.

THE procedure in such cases does not differ from that which is followed on similar applications by subjects. The most frequent form of application for a mandamus by a Government Department in England is that under sect. 299 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), which empowers the Local Government Board to enforce by writ of mandamus orders made by it on a local authority for the performance of their duty under the Act, as therein provided. Reference may be made to *R. v. Staines Union* (1894), 10 R. 292; 62 L. J. Q. B. 540, where the procedure is discussed. Again, sect. 16 of the Education Act, 1902 (2 Edw. VII. c. 42), provides for the enforcement by mandamus of an order of the Board of Education to compel a local authority to fulfil their duty under the Act, as in *R. v. West Riding of Yorkshire C. C.*, reported in the House of Lords as *A.-G. v. West Riding of Yorkshire C. C.*, [1907] A. C. 29; 76 L. J. K. B. 97.

A Government Department would not be entitled, it is apprehended, to apply for the prerogative writ except in respect to matters, the performance of which it was its duty to ensure.

We find applications by the Secretary of State for War for a mandamus to justices to hear and determine a question of disputed compensation under the Defence Acts (*R. (Secretary of State for War) v. Cork JJ.*, [1900] 2 I. R. 105); by the Postmaster-General to enforce compliance with a request for the conveyance of mails (*R. (Postmaster-General) v. Great Northern (Ireland) Rail. Co.*, [1907] 2 I. R. 242); by the Local Government Board for Ireland to guardians to compel the appointment of a medical officer (*R. (Local Government Board) v. North Dublin Union*, [1902] 2 I. R. 412); by the Irish Public Works Commissioners to compel the payment of arrears to them (*R. (Commissioners of Public Works, Ireland) v. Wexford Corporation* (1886), 20 I. L. T. R. 51); and by the Registrar-General to compel a clergyman to make a quarterly return of marriages (*R. (Registrar-General) v. Magee* (1893), 32 L. R. Ir. 87).

A writ of prohibition may be claimed by the Crown at any stage. (*Broad v. Perkins* (1888), 21 Q. B. D. 533; 57 L. J. Q. B. 638.)

The right of the Crown to a certiorari, where a suit touches its profit, is discussed below, p. 583. *R. (Secretary of State for War) v. Goff*, [1904] 2 I. R. 121, was an unsuccessful application by the Secretary of State for War for a certiorari to quash a taxing master's certificate given in respect of lands taken under the Military Lands Act, 1892 (55 & 56 Vict. c. 43). In *R. (Commrs. of Public Works) v. Down JJ.*, [1902] 2 I. R. 220, the Commissioners obtained a certiorari.

As to costs in such proceedings, see below, p. 619.

The Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, specially provides that the limitation of time thereby enacted shall not affect any proceedings by any Department of the Government against any local authority or officer of a local authority.

CHAPTER III.

MANDAMUS TO THE CROWN AND GOVERNMENT DEPARTMENTS.

The Crown and its Servants in General.

A MANDAMUS will not issue against the Crown. Thus, in *R. v. Powell* (1841), 1 Q. B. 352, which was an unsuccessful application for a mandamus to the steward of a manor belonging to the Crown, Lord Denman, C.J., said: "That there can be no mandamus to the Sovereign, there can be no doubt, both because there would be an incongruity in the Queen commanding herself to do an act, and also because the disobedience to a writ of mandamus is to be enforced by attachment." The latter reason seems to be more valid than the former. (See p. 2, above.)

In *R. v. Commissioners of Customs* (1836), 5 A. & E. 380; 6 L. J. M. C. 65, Littledale, J., observed: "The goods are in the hands of the officers of the Crown: a mandamus to them in this case would be like a mandamus to the Crown, which we cannot grant."

The most decisive statement of all is to be found in *R. v. Lords Commissioners of the Treasury* (1872), L. R. 7 Q. B. 387; 41 L. J. Q. B. 178, where Cockburn, C.J., said: "I take it, with reference to that jurisdiction [*i.e.* mandamus] we must start with the unquestionable principle that when a duty has to be performed (if I may use that expression) by the Crown, this Court cannot claim even in appearance to have any power to command the Crown; the thing is out of the question. Over the Sovereign we can have no power."

It would appear also that, in addition to the grounds upon which the above judgments rely, the Crown can also appeal, where it is appropriate, to the principle that only where there is no specific remedy, and by reason of the want of that specific remedy justice cannot be done unless a mandamus issues, will the Court grant a mandamus. (*R. v. Bank of England* (1780), 2 Doug. 524, 526, per Lord Mansfield, C.J., as interpreted by Brett, M.R., in *R. v. Commissioners of Inland Revenue, In re Nathan* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 229.) The last-cited case decides that petition of right is such a specific remedy, in spite of the fact that it is not within the writs that were known to the common law, and is not an absolute legal

remedy, being subject to the grant of a fiat by the Crown. The same principle had been suggested much earlier in *R. v. Powell* (1841), 1 Q. B. 352, at p. 363, when a petition of right formed a far more cumbersome mode of proceeding than it does now. One cannot help doubting, however, whether this part of the decision in *In re Nathan* was quite satisfactory. The judgment of Bowen, L.J., in particular, was based upon an attitude towards the grant of the fiat which does not seem to be justifiable (see below, p. 377), and he even suggests that an undertaking by the Attorney-General during the course of the case that a fiat would be granted converted the prospective petition of right into an absolute legal remedy.

It is equally well established that no mandamus will issue against officers and servants of the Crown as such, and apart from any duty which they owe, by statute or otherwise, to the public or any member of the public, in addition to the duty to the Crown. Where, however, such a duty to the public rests upon them, a mandamus will lie. Cockburn, C.J., stated in *R. v. Lords Commissioners of the Treasury* (1872), L. R. 7 Q. B. 387; 41 L. J. Q. B. 178: "In like manner where the parties are acting as servants of the Crown, and are amenable to the Crown, whose servants they are, they are not amenable to us in the exercise of our prerogative jurisdiction"; and Blackburn, J., said: "We cannot enforce that obligation against the servants by mandamus merely because the Sovereign happens to be the principal"; but he adds that it would be otherwise if they were under a statutory obligation. (See also *R. v. Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131; 57 L. J. Q. B. 433, below, p. 121.) So in *In re Baron de Bode* (1838), 6 Dowl. 776, at p. 792, it was said: "Against servants of the Crown, as such, and merely to enforce the satisfaction of claims upon the Crown, it is an established rule that a mandamus will not lie."

The principle was again laid down by Lord Esher, M.R., in *R. v. Secretary of State for War*, [1891] 2 Q. B. 326; 60 L. J. Q. B. 457: "The appeal must fail on the grounds, first, that a mandamus would not lie against the Crown; and secondly, that it will not lie against the Secretary of State, because in his capacity as such he is only responsible to the Crown, and has no legal duty imposed upon him towards the subject. The principle has been laid down over and over again in many cases." The matter is further discussed below on the cases with regard to the Treasury and the Inland Revenue.

The Attorney-General.

E. p. Newton (1855), 4 E. & B. 869; 24 L. J. Q. B. 246, and *E. p. Costello* (1868) Ir. R. 2 C. L. 380, have already been dealt with above,

p. 11. In both cases the Court would, it seems, have granted a mandamus against the Attorney-General if he had refused to hear and consider an application for a fiat to a writ of error.

The Treasury.

The law as to mandamus to this Department, and, incidentally, to Government Departments in general, is to be found in the already-cited case of *R. v. Lords Commrs. of the Treasury* (1872), L. R. 7 Q. B. 387; 41 L. J. Q. B. 178 (above, pp. 111, 112). It is an extreme case, because the Court was clearly of opinion that the Treasury had been quite wrong in their proceedings, and yet refused to grant a mandamus. Their reason was that there was no statutory obligation upon the Treasury to issue a minute to pay the money in the manner desired by the prosecutors, but that their duty was merely to advise the Crown whether the minute ought to be issued or not.

This case may be said to settle the question of mandamus to the Treasury, which was left uncertain by the previous decisions. In particular, it disapproves of *R. v. Lords Commrs. of the Treasury* (1835), 4 A. & E. 286; 5 L. J. K. B. 20, where it was held that a mandamus lay to the Treasury to pay a certain retiring allowance. Cockburn, C.J., in the later case, regards the decision as depending on a section of a now repealed statute, and doubtful at that. It would appear that the prosecutor himself got little benefit out of the decision, as the Treasury at once revoked the minute granting his allowance. (See *R. v. Lords Commrs. of the Treasury* (1836), 4 A. & E. 976, where a mandamus to them to restore the minute was refused.) In *R. v. Lords Commrs. of the Treasury* (1836), 4 A. & E. 984, Lord Denman, C.J., said that the case only declared that the Treasury must make a return of money which they had admittedly received on account of the prosecutor's pension, and show why it had not been paid over, and that no decision was given on the point of law. In *R. v. Commrs. of Woods and Forests* (1850), 15 Q. B. 761; 19 L. J. Q. B. 497, however, Lord Denman disowned the last sentence of this declaration. But a similar observation is made by Lord Campbell, C.J., in *Chabot v. Viscount Morpeth* (1850), 15 Q. B. 446; 19 L. J. Q. B. 377.

In *R. v. Lord Commrs. of the Treasury* (1851), 16 Q. B. 357; 20 L. J. Q. B. 305, the Court relied on a statutory duty which it thought to be imposed upon the Commissioners by the now repealed statute already referred to in the case in 4 A. & E. 286, though the rule was discharged on other grounds.

The case in 4 A. & E. 286 was finally disposed of by *R. v. Commrs. of Inland Revenue, In re Nathan* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 229 (see below, p. 117).

E. p. Walmsley (1861), 1 B. & S. 81, was an unsuccessful attempt to obtain a rule for a mandamus to the Treasury to pay for books, &c. supplied to a County Court under a statute which enacted that all expenses incident to the holding of such Courts should be paid by the Treasury out of moneys provided by Parliament for the purpose. Moneys had, in fact, been appropriated by statute to these purposes in accordance with the estimates. The Court thought that Parliament voted a lump sum, not the payment of each particular debt, and that such debtors must look to the treasurer of the County Court and not to the Treasury. *Sed quære* whether such a debtor had any remedy against the treasurer. There seems to be a much better case for a mandamus here than in the other instances cited.

In *E. p. Edmunds* (1872), 25 L. T. 705, it was held that no public duty was cast upon the Treasury to direct the audit of the accounts of a receiver of public moneys, and that, consequently, no mandamus would issue to compel them to do so on the motion of such a person.

The principle which is settled in this country by the above cases was laid down, with, as usual, some vigorous dissenting judgments, by the Supreme Court of the United States in *Louisiana v. Jumel* (1882), 17 Otto (107 U. S.), 711.

The India Office.

There is no reported instance of mandamus proceedings against the Secretary of State for India or the Secretary of State in Council of India, but *E. p. Napier* (1852), 18 Q. B. 692; 21 L. J. Q. B. 332, an application for a mandamus against the East India Company, may be cited, as applicable to the Secretary of State in Council of India as successor of the East India Company (see above, p. 24). It was there held that there was no legal obligation upon the East India Company to pay the Commander-in-Chief in India the arrears of pay due to him, and that therefore a mandamus to pay such arrears could not be granted.

Two earlier cases, *R. v. Directors of the East India Co.* (1815), 4 M. & S. 279, and *R. v. Directors of the East India Co.* (1833), 4 B. & Ad. 530; 2 L. J. K. B. 78, arose out of domestic contentions between the Board of Commissioners and the Court of Directors as to the non-transmission of despatches by the latter, and in both the rules were made absolute against the Directors.

The War Office.

In *R. v. Secretary of State for War*, [1891] 2 Q. B. 326; 60 L. J. Q. B. 457, it was held that a mandamus would not lie against the

defendant to compel him to carry out the terms of a royal warrant regulating the pay and retiring allowances of officers and soldiers, inasmuch as no legal duty in relation to such officers and soldiers was imposed upon him either by statute, or contract, or common law. His position was merely that of agent for the Crown, and he was only liable to answer to the Crown whether he had obeyed the terms of his agency or not.

Exactly the same principle was laid down in *Gidley v. Lord Palmerston* (1822), 3 B. & B. 275, which was an action brought for a retired allowance by a War Office clerk against the Secretary at War. (See further below, p. 643.)

The Admiralty.

In two early cases, *E. p. Pering* (1836), 4 A. & E. 949, and *E. p. Ricketts* (1836), 4 A. & E. 999, rules for a mandamus were refused. In the latter case, the ground was that the prosecutrix had no such vested right in certain half-pay as to entitle her to demand its restoration to her; in the former case, which was an application for a mandamus to settle the terms of user of a certain patented invention, of which the Admiralty had made use, it was said that the application was warranted by the terms of the patent. Patteson, J., however, laid down a principle, which appears to be a great deal too wide: "We cannot grant a mandamus to a public board, ordering them to carry a contract into effect."

If the question arose again, presumably a mandamus would be issued against the Admiralty, if they fell within the general principles already enunciated.

The Board of Trade.

A writ of mandamus would issue to the Board of Trade on the general principles already stated. It is true that the Board is still technically a Committee of the Privy Council (see above, p. 41), and that a mandamus will not issue to the Privy Council in its judicial capacity (*E. p. Smyth* (1835), 3 A. & E. 719); but that depends on grounds which have no application to the Board of Trade in its performance of its statutory duties.

In *R. v. Board of Trade* (1874), 22 W. R. 807, reported as *Cowes & Newport Rail. Co. v. Board of Trade* in 43 L. J. Q. B. 242, the Court seems to have had no doubt of its power to issue a mandamus to the Board to appoint an umpire under the Telegraph Acts, 1868 and 1869, though they refused to do so in the particular circumstances of the case.

The Local Government Board.

Mandamus will issue against the Board to compel them to perform their statutory duties. Thus a mandamus issued in *R. v. Local Government Board* (1874), L. R. 9 Q. B. 148; 43 L. J. Q. B. 49, to award compensation under the Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), and in *R. v. Local Government Board* (1885), 15 Q. B. D. 70; 54 L. J. M. C. 104, to hear an application for a provisional order under sect. 16 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77). See also *R. v. Local Government Board* (1907), 96 L. T. 650. There have also been numerous cases of mandamus against the Board's predecessors, the Poor Law Commissioners and the Poor Law Board.

The Local Government Board for Ireland.

There are several instances of applications, successful and unsuccessful, for mandamus to the Irish Local Government Board: see *R. v. Local Government Board* (1900), 34 I. L. T. R. 196, and *Local Government Board for Ireland v. R.*, [1903] A. C. 402; 72 L. J. P. C. 101, under sect. 115 of the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), and *R. v. Local Government Board* (1901), 35 I. L. T. R. 147, under sect. 275 of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52). See also the refusal of a mandamus to the Board's predecessors, the Irish Poor Law Commissioners, in *R. v. Poor Law Commissioners* (1860), 12 Ir. C. L. R. 212, under the Poor Relief (Ireland) Act, 1838 (1 & 2 Vict. c. 56), s. 48.

The Postmaster-General.

There seems to be no reason why the Postmaster-General should not be subject to mandamus where he is under a duty apart from his duty to the Crown, on the principle already explained.

In *R. v. Postmaster-General* (1885), 1 T. L. R. 551, which was an application for a mandamus to compensate a railway company for the use of their telegraphs, the Attorney-General "began by protesting that he did not intend to concede that a mandamus would lie against the Postmaster-General as the head of a Government Department, but he desired to waive the objection on the present occasion." The rule was discharged on the merits.

In *R. v. Postmaster-General* (1873), 28 L. T. 337, a mandamus was applied for to compel the defendant to pay poor rate on the rateable value of telegraph posts and wires as fixed by an assessment committee. The Crown argued that under the statute the only funds which the Postmaster-General had for the purpose were those which the Treasury placed at his disposal; that he had offered to pay

the amount which the Treasury had allowed him for the purpose ; that the Court could not control the Treasury in such a matter by mandamus (see above, p. 113) ; and that consequently a mandamus could not there issue against the Postmaster-General. The Court assented, although it thought the statute clearly intended full poor rates to be paid.

In *R. v. Postmaster-General* (1878), 3 Q. B. D. 428 ; 47 L. J. Q. B. 435, a mandamus was issued to the defendant to assess part of certain compensation under the Telegraph Act, 1868 (31 & 32 Vict. c. 110), though it was refused as to other part, and judgment was given against the Postmaster-General on demurrers to the return and plea to the mandamus. See also previous proceedings in the same matter, 32 L. T. 559.

The Inland Revenue Authorities.

Mandamus will issue to the Inland Revenue Commissioners and the Income Tax Commissioners in accordance with the general principles already laid down. *R. v. Commrs. of Excise* (1788), 2 T. R. 381, was a case in which a mandamus to the Commissioners to grant a permit for the removal of certain wine was refused on the construction of the statute. In a later case of a similar kind, *R. v. Commrs. of Excise* (1845), 6 Q. B. 975 ; 14 L. J. Q. B. 179, a preliminary objection was taken, but ultimately waived, that a mandamus did not lie against the Commissioners, the refusal to issue the permit having been made by the excise officer acting under their directions, and they, in their turn, having given these directions under the orders of the Treasury. See also *In re Hayward* (1845), 14 L. J. Q. B. 113.

In *R. v. Commrs. of Stamps and Taxes* (1846), 9 Q. B. 637 ; 16 L. J. Q. B. 75, which was an action on the return to a mandamus to the Commissioners to return certain probate duty, the objection that no mandamus could lie against the Commissioners was waived for the purpose of that case only, and judgment was given for them on the merits.

In the similar proceedings in *R. v. Commrs. of Stamps and Taxes* (1849), 18 L. J. Q. B. 201, no such objection was taken, and judgment was given against the Commissioners. In *In re Webster* (1859), 1 L. T. 45, a rule for a similar purpose was refused, in the absence of consent on the part of the Commissioners. But in *R. v. Commrs. of Inland Revenue, In re Nathan* (1884), 12 Q. B. D. 461 ; 53 L. J. Q. B. 229, which was an application for a mandamus to return probate duty, the objection was taken successfully, and it was held that the statute created no duty between the Commissioners and the

applicant, and that the latter had a remedy by petition of right. This decision has been discussed above, pp. 111, 112, but it must now be taken to be the law so far as mandamus to the Commissioners for that particular purpose is concerned.

In *R. v. Commrs. of Inland Revenue* (1888), 21 Q. B. D. 569; 57 L. J. M. C. 92, which was an application for a mandamus to grant an excise licence, the objection that a mandamus could not be granted against the Commissioners as servants of the Crown was taken, but waived for that case only, as in the case in 9 Q. B. 637, cited above.

R. v. Commrs. for Special Purposes of the Income Tax (1888), 21 Q. B. D. 313; 57 L. J. Q. B. 513, shows that the principle of *In re Nathan*, which was urged on the Court by counsel for the Commissioners, did not extend to claims for the repayment of overpaid income tax under sect. 133 of the Income Tax Act, 1842 (now repealed by the Finance Act, 1907, s. 24). So *Commrs. for Special Purposes of the Income Tax v. Pemsel*, [1891] A. C. 531; 61 L. J. Q. B. 265, shows that it does not extend to claims to have an allowance granted under sect. 61, No. VI. of the same Act.

In *R. v. Commrs. of Inland Revenue*, [1891] 1 Q. B. 485; 60 L. J. Q. B. 376, an application for a mandamus to grant pawnbrokers' licences, the objection that a mandamus would not lie to the Commissioners as servants of the Crown was once again taken, and waived *pro hac vice*. In *R. v. Commrs. of Inland Revenue*, [1907] 1 K. B. 108; 76 L. J. K. B. 41, we find the Crown still taking and waiving the same objection.

As has already been pointed out, such an objection cannot prevail where the Commissioners are under a statutory or other duty to the public or the applicant.

There have also been plentiful instances of mandamus issued to minor officials, or sets of officials, of the Inland Revenue.

The Commissioners of Customs.

R. v. Commrs. of Customs (1836), 5 A. & E. 380; 6 L. J. M. C. 65, was an application for a mandamus to compel the Commissioners to deliver up goods rightfully in their custody to secure the duty, on the tender to them of a sum which the applicant alleged, but which they denied, to be the whole duty payable. There was, under the circumstances, no duty which was owed by the Commissioners to the applicant, and the Court refused the mandamus, leaving the applicant to any other remedy he might have.

R. v. Lindsay and the Board of Customs (1888), 4 T. L. R. 464, was an attempt to obtain a mandamus against the Commissioners and

the Registrar-General of Shipping and Seamen to register the applicant as managing owner of a ship. A question was raised as to the jurisdiction, since the registration in question would be at Leith, and the general question of the power to issue a mandamus to the Commissioners seems also to have been raised. But the mandamus was refused on the interpretation of the statutes.

The Board of Agriculture and Fisheries.

There appear to be no reported proceedings for a mandamus against this Board, but it should be noted that there have been successful mandamus proceedings against the Board's predecessors, the Inclosure Commissioners, the Land Commissioners and the Tithe Commissioners.

The Department of Agriculture and other Industries and Technical Instruction for Ireland.

Mandamus could have issued to the Inspectors of Irish Fisheries, the predecessors of this Department as far as fisheries were concerned, as appears from *In re Lord Listowel's Fishery* (1875), Ir. R. 9 C. L. 46; *R. v. Inspectors of Irish Fisheries* (1876), Ir. R. 10 C. L. 213; *R. v. Inspectors of Irish Fisheries* (1887), 20 L. R. Ir. 155; and *R. v. Inspectors of Irish Fisheries*, [1896] 2 I. R. 40, though none of these applications were successful.

The National Debt Commissioners.

It is apprehended that, in respect of certain of their functions, the Commissioners must be deemed to be under a statutory duty to the subject, and therefore could be compelled by mandamus to perform their duty; for instance, as to the payment of annuities when due, or the repayment of moneys invested with them under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 52.

The Commissioners of Woods and Forests.

In *E. p. Reeve* (1837), 5 Dowl. 668, the Court refused a rule for a mandamus to the Commissioners to pay a poor rate in respect of lands held by them for the Crown.

In *R. v. Commrs. of Woods and Forests* (1848), 17 L. J. Q. B. 341, a mandamus was issued to compel the Commissioners to issue their warrant to the sheriff for the summoning of a jury to assess compensa-

tion for land, of their intention to take which they had given notice under 9 & 10 Viet. c. 38. The Court said that they were public officers invested with public duties which might affect the rights of private persons. Any objections to the mandamus, such as the fact that the Commissioners had no funds specifically appropriated to the purchase and the alleged impossibility of enforcing specific performance, should be taken, if at all, on the return.

The objections were so taken, as reported in *R. v. Commrs. of Woods and Forests* (1850), 15 Q. B. 761; 19 L. J. Q. B. 497, and judgment was given for the Commissioners. The decision must be taken to depend upon the special code contained in the Act under which the notice of intention to take the lands was given. It would seem that if the Lands Clauses Consolidation Act, 1845, had been incorporated, and the Commissioners had given notice to treat, they would have been in the same position as any other compulsory purchaser. *Quære*, whether the judgment of the Court amounted to more than this. Its words were: "There may be reason for holding a notice to treat for a purchase, when given by a private company which has the option of taking land, to be a declaration of their option to take, and a contract of purchase, of which this Court will compel specific performance. . . . But in the case of Commissioners for the public, having a limited power of taking land, provided the required quantity can be obtained for a given sum, a notice to treat for the purchase should be construed to be that which it is; the Commissioners cannot ascertain whether the land can be obtained for a price unless they treat for a purchase."

The Commissioners of Public Works in Ireland.

Instances of proceedings for a mandamus against this body, all unsuccessful on the construction of the statutes, will be found in *R. v. Commrs. of Public Works* (1855), 5 Ir. C. L. R. 113; *R. v. Commrs. of Public Works in Ireland* (1857), 2 Ir. Jur. (N. S.) 305; and *R. v. Commrs. of Public Works* (1861), 6 Ir. Jur. (N. S.) 304. The first two proceedings were to compel the appointment of an arbitrator to assess compensation; the last to compel the service of a notice to treat.

The Ecclesiastical Commissioners.

It seems to follow from the observations of Lord Hardwicke, L.C., in *Vernon v. Blakerby* (1740), 2 Atk. 144, more fully reported in Barn. Ch. 377, that a mandamus would lie to the Commissioners to perform a duty towards the public.

The Charity Commissioners.

A mandamus to the Commissioners to decide a question arising out of a scheme made under the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), was refused, on the ground that the applicants had alternative, convenient and effectual remedies, by proceedings under the Charitable Trusts Act, 1853, s. 28. (*R. v. Charity Commrs. for England and Wales*, [1897] 1 Q. B. 407; 66 L. J. Q. B. 321.)

The Commissioners in Lunacy.

In *R. v. Commrs. of Lunacy*, [1897] 1 Q. B. 630; 66 L. J. Q. B. 387, a rule for a mandamus to discharge a lunatic from detention was discharged on the ground that the Commissioners had a discretion in the matter under sect. 49 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5).

The Irish Land Commission.

Mandamus lies to the Land Commission to hear and determine: see the three cases *R. v. Irish Land Commission*, [1894] 2 I. R. 394; [1899] 2 I. R. 399; and (1900) 34 I. L. T. R. 219. In the second case an appeal was held not to lie to the House of Lords ([1899] A. C. 435).

The Office of Land Registry.

In *R. v. Vice-Registrar of Office of Land Registry* (1889), 24 Q. B. D. 178; 59 L. J. Q. B. 113, a mandamus was applied for, as "a convenient mode of obtaining a judicial interpretation of a statute," to compel the registration of certain charges. The Court interpreted the statute in a sense unfavourable to the applicant.

The Registry of Friendly Societies.

In *R. v. Registrar of Friendly Societies* (1872), L. R. 7 Q. B. 741; 41 L. J. Q. B. 366, a mandamus to the Registrar to register a trade union was refused on the merits. As to appeals from a refusal to register a friendly society, see above, p. 102.

The Comptroller-General of Patents, Designs, and Trade Marks.

The Court refused a mandamus to this official to hear a petition in opposition to the grant of a patent in *R. v. Comptroller-General of Patents, Designs, and Trade Marks*, [1899] 1 Q. B. 909; 68 L. J. Q. B. 568, partly on the construction of the statutes, and partly because the

Attorney-General had directed that the prosecutor should not be heard, as he had power to do under sect. 95 of the Patents, Designs, and Trade Marks Act, 1883 (now sect. 74 of the Patents and Designs Act, 1907).

The Registrar of Joint Stock Companies.

In *R. v. Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131; 57 L. J. Q. B. 433, it was argued that the Registrar was an officer to whom mandamus did not lie, he being an officer of the Board of Trade, a Government Department. The Court gave no judgment on this matter, and, indeed, it does not seem that in this bare form the contention is sustainable; Wills, J., in fact, expressed himself forcibly in this sense. The mandamus, which was to file a contract alleged by the Registrar to be insufficiently stamped, was refused on the ground that there was a proper mode of questioning the Registrar's refusal otherwise than by mandamus.

In *R. v. Registrar of Joint Stock Companies*, [1891] 2 Q. B. 598; 61 L. J. Q. B. 3, no technical objection was taken on behalf of the Registrar, but the rule was discharged on the merits after appeal.

In *R. v. Registrar of Joint Stock Companies for Ireland*, [1904] 2 I. R. 634, the rule was discharged on the merits.

CHAPTER IV.

PROHIBITION TO GOVERNMENT DEPARTMENTS.

Government Departments in General.

A WRIT of prohibition will issue to a Government Department when that Department can be regarded as a subordinate tribunal acting judicially, and when it fails to keep within the limits of its jurisdiction. It will not lie against Crown officers acting as such, and responsible only to the Crown, in an executive capacity. (*Chabot v. Viscount Morpeth* (1850), 15 Q. B. 446; 19 L. J. Q. B. 377.) The principle is broadly laid down by Brett, L.J., in *R. v. Local Government Board* (1882), 10 Q. B. D. 309; 52 L. J. M. C. 4: "My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that wherever the Legislature entrusts to any body of persons other than the superior Courts the power of imposing an obligation upon individuals, the Courts ought to exercise as widely as they can the power of controlling those bodies of persons, if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament." In these "general sailing orders for future times," as they are called in *In re Local Government Board* (1885), 16 L. R. Ir. 150; 18 L. R. Ir. 509, he only intends, as Pallett, C.B., there points out, to refer to such bodies when exercising judicial functions.

The Attorney-General.

In *In re Van Gelder's Patent* (1888), 6 R. P. C. 22, reported in the Court of first instance as *R. v. A.-G.*, in 4 T. L. R. 488, it was sought to prohibit the Attorney-General from allowing, on appeal, a certain amendment of a patent. The Master of the Rolls said: "If what I have said is true, after all the Attorney-General is not a Court. He may have a judicial function to perform, but he is not a Court, and prohibition does not lie to him"; and Bowen, L.J., said: "At common law, the Attorney-General is, when he is exercising his functions as an officer of the Crown, in no case that I know of, a Court in the ordinary sense." Lindley, L.J., said that he never heard

of a prohibition to the Attorney-General, and that it appeared to him contrary to principle and contrary to practice. These opinions are enlarged upon by A. L. Smith, L.J., who, like Bowen, L.J., had had special opportunities of studying the functions of the Attorney-General, in *R. v. Comptroller-General of Patents, Designs, and Trade Marks*, [1899] 1 Q. B. 909; 68 L. J. Q. B. 568: "I wish to say a word or two about the position of the Attorney-General, because in my judgment it is of importance in this case, and his position appears likely to be lost sight of. Everybody knows that he is the head of the English Bar. We know that he has had from the earliest times to perform high judicial functions which are left to his discretion to decide. For example, where a man who is tried for his life and convicted alleges that there is error on the record, he cannot take advantage of that error unless he obtains the fiat of the Attorney-General, and no Court in the Kingdom has any controlling jurisdiction over him. [See, however, the cases cited above, pp. 11, 112.] That perhaps is the strongest case that can be put as to the position of the Attorney-General in exercising judicial functions." The learned judge then refers to the Attorney-General's powers as to *nolle prosequi* and criminal informations, and then, after alluding to the remarks of Bowen, L.J., which have been already cited, he concludes: "It follows that his decisions, when exercising such functions, were not subject to review by the Court of Queen's Bench, and are not now subject to review by the Queen's Bench Division or this Court."

The Board of Trade.

R. v. Commrs. under the Boiler Explosions Act, 1882, [1891] 1 Q. B. 703; 60 L. J. Q. B. 544, was a motion for a prohibition against Commissioners appointed by the Board of Trade under the above-mentioned Act (45 & 46 Vict. c. 22), to restrain them from holding an inquiry in a case where it was alleged there had been no "boiler explosion" within the meaning of the Act. The Court was of the contrary opinion, and discharged the rule.

As to granting an injunction to restrain an inquiry by the Board, see *In re Pontypridd and Rhondda Valleys Tramways Co., Ltd.* (1889), 58 L. J. Ch. 536, above, p. 49.

The Local Government Board.

In *R. v. Local Government Board* (1882), 10 Q. B. D. 309; 52 L. J. M. C. 4 (cited above, p. 123), a prohibition was sought to restrain the Board from proceeding with an appeal by memorial against an apportionment by the local authority of certain sums

alleged to be due to them for private improvement works. The Court held that no prohibition ought to be granted in that particular case. Compare also *Donahoo v. Local Government Board*, above, p. 50.

The Local Government Board for Ireland.

In *In re Local Government Board* (1885), 16 L. R. Ir. 150; 18 L. R. Ir. 509, to which reference has already been made above, p. 123, a prohibition was sought to restrain the Board from proceeding on a memorial, which had prayed them to make a Provisional Order under the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 214, for which purpose the Board had opened an inquiry. The Court held that in holding such an inquiry the Board were not acting in a judicial capacity and could not be prohibited.

The Inland Revenue Authorities.

R. v. General Commrs. of Taxes for Clerkenwell, [1901] 2 K. B. 879; 70 L. J. K. B. 1010, was an application to prohibit the Commissioners from assessing certain profits to income tax, on the ground that by an erroneous decision on the facts they were seeking to give themselves a jurisdiction which they did not possess. It was held that they were merely deciding facts going to the quantum of taxable liability, and that the proper remedy was by appeal upon a case stated.

No doubt, however, prohibition would issue to any of the various Inland Revenue authorities in cases where they fall within the general principle already enunciated on p. 123.

The Board of Agriculture and Fisheries.

Instances will be found of proceedings for prohibition, both successful and unsuccessful, against predecessors of the Board, viz., against the Tithe Commissioners in *In re Ystradgunlais Tithe Commutation* (1844), 8 Q. B. 32; *In re Appledore Tithe Commutation* (1845), 8 Q. B. 139; 17 L. J. Q. B. 59; *In re Crosby Tithes* (1849), 13 Q. B. 761; 18 L. J. Q. B. 258; and *Russell v. Tithe Commrs.* (1871), L. R. 6 C. P. 596; 40 L. J. C. P. 265; and against the Inclosure Commissioners in *Church v. Inclosure Commrs.* (1862), 11 C. B. (N. S.) 664; 31 L. J. C. P. 201; and *Grubb v. Inclosure Commrs.* (1863), 13 C. B. (N. S.) 805; 31 L. J. C. P. 221.

The Commissioners of Woods and Forests.

A prohibition to the Commissioners was refused in *Chabot v. Viscount Morpeth* (1850), 15 Q. B. 446; 19 L. J. Q. B. 377, to restrain them from entering and recording or further proceeding

upon a verdict and judgment alleged to have been given by reason of the misdirection of the sheriff in compensation proceedings. The Court thought that the Commissioners were acting merely in an executive capacity.

The Commissioners of Public Works in Ireland.

These Commissioners were prohibited, in *R. v. Board of Works* (1867), 1 I. L. T. News. 701, from granting a licence to fish for oysters after an inquiry held by them.

The Railway and Canal Commission.

Primâ facie, prohibition would lie to the Commissioners in their judicial capacity, but a difficulty arose from the fact that the powers over railway companies of the Court of Common Pleas, a superior Court, were transferred to the Commissioners by the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48). It was, however, decided, after argument, in *South Eastern Rail. Co. v. Railway Commrs.* (1881), 6 Q. B. D. 586; 50 L. J. Q. B. 201, that a prohibition would lie, and there have since been a good many instances in which a prohibition has issued.

The Irish Land Commission.

A prohibition will issue to the Land Commission as a Court of inferior jurisdiction. This appears from *E. p. Hutchinson* (1883), 12 L. R. Ir. 79; and *E. p. Johnston* (1884), 14 L. R. Ir. 80.

The Registry of Friendly Societies.

An application for a prohibition to the Chief Registrar in *R. v. Chief Registrar of Friendly Societies* (1900), 16 T. L. R. 346, to restrain him from adjudicating upon certain claims on the dissolution of a society, was unsuccessful, on the ground that the Registrar had not exceeded his jurisdiction.

CHAPTER V.

CERTIORARI TO GOVERNMENT DEPARTMENTS.

Government Departments in General.

THE writ of certiorari is the ordinary process by which the High Court brings up for examination the acts of bodies of inferior jurisdiction. Such bodies need not be such as are ordinarily considered to be Courts, nor need such acts be strictly judicial acts; the only limitation is that such acts must not be purely ministerial acts. (*R. v. Woodhouse*, [1906] 2 K. B. 501; 75 L. J. K. B. 745.) It follows from this statement of the law (for which see also *R. v. Local Government Board for Ireland*, [1902] 2 I. R. 349, below, p. 128) that many acts of Government Departments can be the subject of certiorari.

The Treasury.

See the observations of Palles, C.B., in *R. v. Local Government Board for Ireland*, [1902] 2 I. R. 349, at p. 375.

The Home Office.

In *R. v. Hastings L. B.* (1865), 6 B. & S. 401, a certiorari was sought to remove a Provisional Order of the Secretary of State, empowering the Local Board to purchase land compulsorily, pursuant to the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 75, and all proceedings connected therewith. It was held that the order was not a judicial one, and that the Court had no power to remove it; and also that there was nothing in the Act entitling the Court to interfere with the powers of the Secretary of State thereunder.

It would appear, however, that the Home Secretary or other Secretary of State would be amenable to a certiorari in a proper case.

The Colonial Office.

In *E. p. Tilonko* (1907), *Times News*. Oct. 14, Nov. 27, a rule to bring up an order of the Secretary of State made under the Colonial Prisoners Removal Act, 1884 (47 & 48 Vict. c. 31), was refused on the merits.

The Local Government Board.

In *R. v. Local Government Board* (1873), L. R. 8 Q. B. 227 ; 42 L. J. Q. B. 131, and in *R. v. Local Government Board*, [1901] 1 K. B. 210 ; 70 L. J. K. B. 272, rules for a certiorari to remove orders of the Board were discharged and made absolute respectively, the orders being held respectively to be within and outside the powers of the Board. (See also the Irish cases below.)

We may add here instances of certiorari proceedings against the Board's predecessors, the Poor Law Commissioners and the Poor Law Board, as in *R. v. Poor Law Commrs.* (1838), 6 A. & E. 56 ; 7 L. J. M. C. 33 ; *R. v. Poor Law Commrs.* (1846), 9 Q. B. 291 ; and *R. v. Poor Law Board* (1871), L. R. 6 Q. B. 785 ; 41 L. J. M. C. 16. For the statutory provisions as to certiorari under the Acts relating to the poor law, see the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76), ss. 105, 106, 107, and the Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 13. For the practice, see Short & Mellor, Crown Office Practice, p. 148.

The Local Government Board for Ireland.

In *R. v. Local Government Board* (1878), 2 L. R. Ir. 316, it was argued that an order of the Board constituting a township was merely ministerial, and not such a judicial act as could be reviewed by means of a certiorari. The Court held that the action of the Board involved acts and determinations, which were of a judicial character and therefore proper to be reviewed by the Court.

In *R. v. Local Government Board* (1884), 14 L. R. Ir. 186, a certiorari was refused on the ground that the Board had a discretion in the particular case (under the Poor Relief (Ireland) Act, 1838 (1 & 2 Vict. c. 56), s. 33).

In *R. v. Local Government Board* (1902), 36 I. L. T. R. 31, under the Poor Relief (Ireland) Act, 1851 (14 & 15 Vict. c. 68), ss. 2, 6, a certiorari was refused.

In *R. v. Local Government Board for Ireland*, [1902] 2 I. R. 349, a case with regard to orders made under sect. 115 (18) of the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), it was insisted that the Board was a Government administrative department, created for administrative purposes only, and that a certiorari would not issue to bring up any of its determinations, although the words of the statute might be such as, if used of a body of a different character, would be construed to confer a judicial power. Palles, C.B., pointed out that, at any rate as far as its succession to the Poor Law Commissioners went, the Board was liable to certiorari, and that under the

Act of 1898 its acts were clearly judicial in several respects, and proceeded to hold that in the particular matter in question they were not merely ministerial and were subject to be brought up by certiorari. The other members of the Court delivered judgment to a similar effect.

From *R. v. Local Government Board* (1903), 37 I. L. T. R. 89, it appears that, when a person has appealed by memorial to the Board under sect. 268 of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), he cannot afterwards contend, in certiorari proceedings, that the Board had no jurisdiction to entertain his appeal.

In *R. v. Local Government Board*, [1906] 2 I. R. 206, it was held, on the construction of the Public Health (Ireland) Act, 1878, s. 232, that a certiorari ought not to issue to bring up an order of the Board.

The Inland Revenue Authorities.

See *R. v. Commrs. of Income Tax for the City of London* (1904), 91 L. T. 94, where the Commissioners of Inland Revenue applied unsuccessfully for a writ of certiorari to bring up a certificate given under sect. 23 of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), on the ground that it was given without jurisdiction.

The Board of Agriculture and Fisheries.

In *R. v. Board of Agriculture* (1899), 15 T. L. R. 177, the Court discharged a rule nisi for a certiorari to the Board and the Ecclesiastical Commissioners to quash a certificate given by the Board that certain tithes should be redeemed in consideration of a certain sum paid to the Ecclesiastical Commissioners.

Reference must also be made here to the cases of certiorari to the Tithe Commissioners, predecessors of the Board. In *In re Dent Commutation* (1845), 8 Q. B. 43, it was held that on a motion for certiorari to bring up the award of an Assistant Tithe Commissioner respecting the boundaries of a parish, the Court, under the Tithe Act, 1837 (7 Will. IV. & 1 Vict. c. 69), s. 3, might consider, not only the merits of the decision as to boundary, but also all questions usually discussed on certiorari.

In *R. v. Merson* (1842), 3 Q. B. 895; 12 L. J. Q. B. 7, where an award of an Assistant Tithe Commissioner as to a boundary had been removed into the Queen's Bench by certiorari, it was held that the Court had a discretion as to whether they would direct a feigned issue under the Tithe Act, 1839 (2 & 3 Vict. c. 62), s. 35.

The statutory provisions as to certiorari in the case of Tithe Commissioners will be found in the sections already cited. The Tithe

Act, 1837, s. 3, was repealed, except as to any tithes which have not been commuted, by the Statute Law Revision (No. 2) Act, 1890 (53 & 54 Vict. c. 51).

For the practice, see Short & Mellor, Crown Office Practice, p. 150.

The Department of Agriculture and other Industries and Technical Instruction for Ireland.

An application for a certiorari was made in *In re Lord Listowel's Fishery* (1875), Ir. R. 9 C. L. 46, to bring up two orders of the Special Commissioners for Irish Fisheries, whose powers had, at the date of the proceedings, been transferred to the Inspectors of Irish Fisheries, and are now vested in the Department of Agriculture, &c. The application was refused on the merits.

The Commissioners of Woods and Forests.

In *Chabot v. Viscount Morpeth* (1850), 15 Q. B. 446; 19 L. J. Q. B. 377, a case which is dealt with above, p. 125, it was suggested both in argument and by Lord Campbell, C.J., that a writ of certiorari to quash the proceedings on the sheriff's inquisition might have succeeded, though a prohibition could not issue.

The Commissioners of Works.

See *Streatham and General Estates Co., Ltd. v. Commrs. of Her Majesty's Works and Public Buildings* (1888), 52 J. P. 615, above, p. 81.

The Ecclesiastical Commissioners.

The rule discharged in *R. v. Board of Agriculture* (1899), 15 T. L. R. 177 (see above, p. 129), was also obtained against the Ecclesiastical Commissioners.

The Irish Land Commission.

The case of *R. v. Irish Land Commission*, [1899] 2 I. R. 399, in which the question was elaborately discussed by four judges, appears to throw no light on the point as to whether orders of the Land Commission can be brought up by certiorari. It is unfortunate that in *Earl of Gosford v. Irish Land Commission*, [1899] A. C. 435, it was held that the House of Lords could not entertain an appeal from the decision. However, Pallett, C.B., in *R. v. Irish Land Commission* (1900), 34 I. L. T. R. 219, seems to have been under the impression that the previous decisions had determined that a certiorari would issue to the Land Commission.

CHAPTER VI.

ARBITRATION.

General Observations.

THE Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 23, is as follows: "This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall is a party; but nothing in this Act shall empower the Court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown." The Act does not extend to Scotland or Ireland (sect. 28).

There is no express exception relating to the Crown or the Duke of Cornwall in the Act.

The Crown, therefore, and the Duke of Cornwall are bound by the Act in any arbitration to which they voluntarily submit, but they cannot be forced to submit to arbitration; neither does the Act affect the prerogative as to Crown costs, as to which see below, p. 613.

Arbitration in the case of particular Government Departments.

In addition to the very numerous Acts relating to particular localities and the expenditure of particular sums of money, there are certain general Acts which provide for arbitration between Government Departments and subjects, and to which it will be useful to refer here.

The Home Office.

Reference may be made to the provisions for arbitration in the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), s. 21, and in the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 47; see *In re Secretary of State for the Home Department and Fletcher* (1887), 18 Q. B. D. 339; 56 L. J. Q. B. 177, a case under sect. 46 of the repealed Coal Mines Regulation Act, 1872

(35 & 36 Vict. c. 76). The former procedure by arbitration in the case of the making of special regulations for dangerous and unhealthy trades is now replaced by an inquiry under sects. 79—81 of the Factory and Workshop Act, 1901 (1 Edw. VII. c. 22).

The War Office.

Acquisition and Clearance of Lands.—(a) See the Defence Acts, 1842 to 1873, viz., the Defence Acts, 1842 (5 & 6 Vict. c. 94), 1854 (17 & 18 Vict. c. 67), 1859 (22 & 23 Vict. c. 12), 1860 (23 & 24 Vict. c. 112), and 1865 (28 & 29 Vict. c. 65), and the Defence Acts Amendment Act, 1873 (36 & 37 Vict. c. 72), to which must be added the Ordnance Board Transfer Act, 1855 (18 & 19 Vict. c. 117), the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106), s. 7, and the Ranges Act, 1891 (54 & 55 Vict. c. 54), s. 11. This last section enables the acquiring authority, where any land is acquired for military purposes under the Defence Act, 1842, or any Act with which the Lands Clauses Consolidation Acts are incorporated, to require compensation to be settled by arbitration, and not by reference to a jury in accordance with the provisions of the Lands Clauses Consolidation Acts. As to the measure of compensation, see *Blundell v. R.*, [1905] 1 K. B. 516 ; 74 L. J. K. B. 91.

(b) The Military Lands Acts, 1892 to 1903, viz., the Military Lands Acts, 1892 (55 & 56 Vict. c. 43), 1900 (63 & 64 Vict. c. 56), and 1903 (3 Edw. VII. c. 47), provide for the purchase of lands, not only by the Secretary of State for War, but also by volunteer corps, with the consent of the Secretary of State, and by the council of a county or borough, at the request of one or more volunteer corps.

The General Piers and Harbours Act, 1861 (24 & 25 Vict. c. 45), s. 20, which gives the promoters of harbours power to grant the Secretary of State lands for batteries and fortifications, and to covenant not to build or do any act prejudicial to such works, does not contain any provisions for arbitration.

Military Tramways.—See the Military Tramways Act, 1887 (50 & 51 Vict. c. 65).

Military Manœuvres.—The Military Manœuvres Act, 1897 (60 & 61 Vict. c. 43), provides for arbitration as to compensation for damage done by manœuvres in the event of disagreement between the claimant and the compensation officer appointed under the Act.

Use of Railways and Tramways in Emergency.—See the Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 16, and the National Defence Act, 1888 (51 & 52 Vict. c. 31), s. 4. The compensation is to be assessed by arbitration.

The Admiralty.

Acquisition of Lands.—See the Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57), and the Naval Works Act, 1895 (58 & 59 Vict. c. 35), s. 2. The last-cited section applies the Defence Acts and the Military Lands Act, 1892, except so far as the last-named Act relates to a volunteer corps, to the acquisition of lands by the Admiralty for the purposes of the navy.

Signal and Telegraph Stations.—See the Admiralty (Signal Stations) Act, 1815 (55 Geo. III. c. 128). To this may be added Lloyd's Signal Stations Act, 1888 (51 & 52 Vict. c. 29), which gives Lloyd's compulsory powers of acquiring lands for the purpose of signal stations.

Coastguard Stations.—See the Coastguard Service Act, 1856 (19 & 20 Vict. c. 83). This incorporates sects. 336—345 of the Customs Consolidation Act, 1853 (16 & 17 Vict. c. 107); see below, p. 134.

Naval Tramways.—The Naval Works Act, 1899 (62 & 63 Vict. c. 42), s. 2, gives the Admiralty all the powers of the Secretary of State under the Military Tramways Act, 1887 (50 & 51 Vict. c. 65).

Use of Railways and Tramways in Emergency.—The National Defence Act, 1888, s. 4 (see above, p. 132), applies to naval as well as military traffic.

The Board of Trade.

The Board of Trade is substituted for the Commissioners of Woods and Forests in the provisions cited below, p. 134, so far as concerns the foreshore under the management of the Board, by the Crown Lands Act, 1866 (29 & 30 Vict. c. 62), ss. 10, 11.

The Postmaster-General.

The Post Office Lands Act, 1863 (26 & 27 Vict. c. 43), gives the Postmaster-General, with the consent of the Treasury, power to sell, exchange, lease, or surrender lands.

Provisions as to compensation, to be assessed in manner provided by the Lands Clauses Consolidation Acts, are contained in the Telegraph Act, 1863 (26 & 27 Vict. c. 112), the powers under which are now exercised by the Postmaster-General. Add to this the Telegraph Act, 1892 (55 & 56 Vict. c. 59).

The Post Office (Land) Act, 1881 (44 & 45 Vict. c. 20), provides for the compulsory purchase of lands or easements by the Postmaster-General, with the consent of the Treasury, and incorporates the Lands Clauses Consolidation Acts.

Arbitration by a stipendiary magistrate, a County Court judge, or a sheriff, with an appeal to the Railway and Canal Commission or

to the Board of Trade, according to circumstances, in the case of differences as to the placing of posts and wires, is provided by sects. 4 and 5 of the Telegraph Act, 1878 (41 & 42 Vict. c. 76), extended to the removal of lines constructed irregularly or without authority by the Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 4.

Provisions for arbitration in the case of differences with railway and canal companies will be found in the Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 9, and in the Telegraph Act, 1878 (41 & 42 Vict. c. 76), ss. 3, 5, 6, 13. Differences arising out of the acquisition of the undertakings of telegraph companies by the Postmaster-General are to be settled in accordance with the Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 8 (7), and the Telegraph Act, 1869 (32 & 33 Vict. c. 73), s. 10. As to arbitration with regard to the transmission of foreign messages by the Postmaster-General, see the last-cited Act, s. 12.

The Inland Revenue and Customs Authorities.

The Customs Consolidation Act, 1853 (16 & 17 Vict. c. 107), ss. 335—338, gives the Treasury power to purchase compulsorily lands not exceeding one half-acre at any one station within half-a-mile of the seashore or tideway for the purposes of the Customs and Excise, and the Lands Clauses Consolidation Act, 1845, ss. 40—68, is incorporated. Supplementary provisions are to be found in the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 275, 276, as amended by the Customs Buildings Act, 1879 (42 & 43 Vict. c. 36), s. 6. Sect. 5 of this last Act gives the Commissioners of Works, under and subject to the provisions of the Commissioners of Works Act, 1852 (15 & 16 Vict. c. 28), power to purchase or hire lands or buildings for the purposes of the Customs in Great Britain, the Isle of Man, or the Channel Islands, and incorporates the Lands Clauses Consolidation Acts, except so much thereof as relates to the purchase of lands otherwise than by agreement.

The Commissioners of Woods and Forests.

Provision is made in the Crown Lands Act, 1829 (10 Geo. IV. c. 50), s. 94, and in the Crown Lands (Scotland) Act, 1833 (3 & 4 Will. IV. c. 69), ss. 2, 3, for arbitration in disputes between the Commissioners and others respecting Crown lands, possessions and land revenues. The Crown Lands Act, 1866 (29 & 30 Vict. c. 62), ss. 26—29, gives the arbitrator in such an arbitration the usual powers with regard to witnesses.

Where proceedings are taken either on the part of the Crown or on the part of a subject with respect to real or personal property under the control of the Commissioners, the Commissioners may not

make any arrangement or settlement with respect to such property without the consent of the Attorney-General or the Lord Advocate, as the case may be. (Crown Lands Act, 1853 (16 & 17 Vict. c. 56), s. 5; Crown Lands Act, 1894 (57 & 58 Vict. c. 43), s. 11.)

The Prison Commissioners.

By sect. 44 of the Prison Act, 1865 (28 & 29 Vict. c. 126), any prison authority may purchase lands or easements, and this power is extended by the Prison Act, 1884 (47 & 48 Vict. c. 51), s. 2 (1), to the Secretary of State. The Lands Clauses Consolidation Acts are incorporated with certain limitations. The Prison Act, 1877 (40 & 41 Vict. c. 21), s. 49, enables the Secretary of State, with the consent of the Treasury, to purchase town halls, court-houses or other rooms situate within the curtilage of a prison and used for purposes other than prison purposes, in manner provided by the Lands Clauses Consolidation Acts.

The Metropolitan Police.

The Metropolitan Police Act, 1886 (49 & 50 Vict. c. 22), s. 4, applies the Lands Clauses Consolidation Acts to the purchase of land by the Receiver for the Metropolitan Police District, but, so far as they relate to purchase otherwise than by agreement, only if he has complied with the preliminaries therein mentioned, and after a Provisional Order has been made by the Home Secretary and confirmed by Parliament.

Proceedings under the Workmen's Compensation Act, 1906.

By this Act (6 Edw. VII. c. 58), s. 9 : “(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person: Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be the employer. (2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under sect. 1 of the Superannuation Act, 1887 (50 & 51 Vict. c. 67), and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act.”

It was the Crown's practice under the repealed Act of 1897 to appear in compensation proceedings under the guise of the particular

Department by which the workman in question was employed, and to permit itself to be proceeded against in such guise, whether such Department had power to be a party to proceedings in similar cases or not, as in *Collins v. Secretary of State for War*; *Secretary of State for War v. Murray*; *Dawson v. Adams* (*Admiralty Commrs. third parties*); and *Topping v. Prison Commrs.*, none of them reported. Neither the Act of 1897 nor the Act of 1906 in themselves seem to justify this course. They quite properly treat "the Crown" as the employer in every case, and provide no machinery for proceedings against a Department or the head of a Department, except in the case of persons in the private service of the Crown. But the Workmen's Compensation Rules, 1907, by Rule 79, provide: "In any proceedings under this Act or these Rules arising out of an injury to a workman employed by or under the Crown, in which, if the employer were a private person, such employer would be a necessary party, the head of the Department by, in or under which the workman is employed, or, where the Department is administered by a Board or by Commissioners, such Board or Commissioners, shall be made a party under his or their official title as representing the Crown." Provision is also made for service on the permanent secretary to the Department or its solicitor. *Quere*, whether the Act enables any such provision to be made by the Rules. In any event, it does not seem that the provisions as to costs in Sched. II. (7) to the Act, and Rules 61, 62, are appropriate to the Crown, or that any costs could be recovered against the Crown or a Department unless they chose to pay them.

APPENDIX OF PRECEDENTS.

Defence of the Heads of a Government Department sued in respect of Trespasses.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

Between A. B. and C. D.	-	-	-	-	-	-	-	-	<i>Plaintiffs</i>
									and
HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR									
THE WAR DEPARTMENT	-	-	-	-	-	-	-	-	<i>Defendant.</i>

DEFENCE.

1. The Defendant submits that the Court has no jurisdiction to entertain this action, Her Majesty's Secretary of State for War being entitled to sue but not being liable to be sued in any of Her Majesty's Courts.

2. The Defendant is merely an agent of the Crown, owing no duty to the Plaintiffs and only responsible to Her Majesty and to Parliament. He submits that neither he nor any other of Her Majesty's ministers is liable to be sued in respect of acts done by him as the executive government (or part of the executive government) on behalf of Her Majesty, but that the remedy of the Plaintiffs if any is by Petition of Right to Her Majesty.

3. The claim of the Plaintiffs is in respect of an alleged tort or alleged torts for which neither the Crown nor any agent of the Crown, as such, can be sued either by Petition of Right or otherwise. Her Majesty's Secretary of State for War is not (as the Defendant submits) liable to be restrained by any injunction of this or any other Court.

4. The Defendant does not admit any of the allegations of the first or of the second paragraph of the Statement of Claim.

5. The Defendant denies that he has committed any such trespass as in the Statement of Claim in that behalf alleged, nor has any such trespass been committed by his authority or by any person or persons in his service or under his orders. The Defendant has no authority over the soldiers in Her Majesty's service, they being subject only to their commanding officers. And the Defendant, being only a minister and agent of the Crown, is not in law responsible for any acts or defaults of the soldiers or any other person in Her Majesty's service. The Defendant did not cause or do any of the acts or things alleged in paragraph 3 (a) or paragraph 3 (b) of the Statement of Claim, even if the same were ever done by anyone, which is not admitted, except to the extent hereinafter stated in reference to notice boards.

6—10. [*Merits.*]

11. The Defendant denies each and every of the allegations of the 6th as also of the 7th paragraph of the Statement of Claim. Such allegations are respectively without any foundation whatsoever in fact.

12. The Defendant submits as matter of law that, for the reasons hereinbefore appearing among others, this action cannot be maintained, and that the same being prosecuted, as it is, after full notice of the various objections thereto ought to be dismissed with costs.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice .

Between A. B. and C. D. - - - - - *Plaintiffs*
and

E. F., G. H., &c. (the Lords Commissioners of the
Admiralty), and K. L. (the Director of Naval Works) - *Defendants.*

DEFENCE.

1. The Defendants submit that the Court has no jurisdiction to entertain this action, the Lords Commissioners of the Admiralty, although entitled in certain circumstances to sue, not being liable to be sued in any of Her Majesty's Courts except in the cases specially provided for by statute, which do not comprise or apply to the claim of the Plaintiffs in this action.

2. The Defendants are merely agents of the Crown, owing no duty to the Plaintiffs, and only responsible to Her Majesty and to Parliament. It is

submitted that they are not liable to be sued in respect of acts done by them as the Executive Government (or part of the Executive Government) on behalf of Her Majesty, but that the remedy of the Plaintiffs, if any, is by Petition of Right to Her Majesty.

3. The claim of the Plaintiffs is in respect of an alleged tort or alleged torts, for which neither the Crown nor any agent of the Crown (and in particular the Director of Naval Works), as such, can be sued, either by Petition of Right or otherwise, and neither the Lords Commissioners of the Admiralty, nor the Director of Naval Works, are or is, as such, liable to be restrained by any injunction of this or any other Court.

4. The Defendants do not, any of them, know anything or make any admission with respect to any of the matters alleged in the second, third, and fourth paragraphs of the Statement of Claim, or any of such paragraphs respectively.

5—8. [*Merits.*]

9. The Defendants respectively deny that they or any of them have or has been guilty of, or threatened, or intended to commit any trespass, or other wrongful act in the premises. The Lords Commissioners of the Admiralty are entitled, following the procedure in that behalf prescribed by statute but not otherwise, to acquire, and by way of compulsory purchase if necessary, such portions of the land of the Plaintiffs or of any other persons as may be required, or they may deem expedient, for any purpose of Her Majesty's Navy, or for the purpose of the works specified in the schedule to the Naval Works Act, 1896, and in particular the College for Naval Cadets therein mentioned, and they intend to cause to be taken the necessary legal steps for the acquisition of the lands that have been surveyed and marked out as herein-before mentioned. Save as aforesaid, the defendants deny each and every of the allegations of the 17th paragraph of the Statement of Claim, and they contend that the submission in that behalf stated in the 18th paragraph of the Statement of Claim is not well founded.

10. The Defendants deny that they or any of them have or has been guilty of any wrongful act in the premises, or done anything for which they are liable to be sued by the Plaintiffs, and they submit, as matter of law, that for the reasons herein-before appearing, among others, this action cannot be maintained.

(*Raleigh v. Goschen*, [1898] 1 Ch. 73; 67 L. J. Ch. 59.)

Defence and Reply in an Action against a Government Department on a Contract.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

Between A. B. and C. D. - - - - - - Plaintiffs
and

THE COMMISSIONERS OF HIS MAJESTY'S WORKS AND
PUBLIC BUILDINGS - - - - - *Defendants.*

DEFENCE.

1. The Defendants object that no claim in this action can in any event be maintained against them upon the contract alleged, and that the Plaintiffs can put forward such claim only (if at all) by Petition of Right.

The Defendants are a corporation under and subject to the provisions of, and with the powers conferred by, 14 & 15 Vict. c. 42, 15 Vict. c. 28, and 37 & 38 Vict. c. 84, and not further or otherwise. The contract mentioned in the Statement of Claim was entered into by the Defendants as servants and agents of the Crown and on behalf of the Crown as a Department of the Government and not otherwise.

2. The Crown, by its officers and servants, the Defendants, accepted a tender from the Plaintiffs to [contract set out].

3. The said contract was embodied in an Indenture dated the day of , between the Plaintiffs and the Defendants, as officers and servants of the Crown. The consideration payable for the erection and completion of the work was to be paid out of public moneys, and the premises were required as offices for the public service.

4—10. [*Merits.*]

REPLY.

1. The Plaintiffs deny that the contract mentioned in the Statement of Claim was entered into by the Defendants as servants and agents of the Crown, and on behalf of the Crown as a Department of the Government and not otherwise, and they say that the same was entered into by the Defendants as principals. They say the Defendants are a corporation to all intents and purposes.

2—6. [*Merits.*]

7. The Plaintiffs join issue with the Defendants on the point of law raised in paragraph 1 of the Defence, and submit that the same should be heard and determined by the Court before the trial of the action.

(*Graham v. His Majesty's Commrs. of Public Works and Buildings*, [1901] 2 K. B. 781; 70 L. J. K. B. 860.)

Pleadings in an Action under the Merchant Shipping Act, 1894, s. 460.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

Between A. B. (on behalf of himself and other the Owners of the
steamship X.) - - - - - - - - - Plaintiff

and

THE SECRETARY OF THE BOARD OF TRADE - - - Defendant.

STATEMENT OF CLAIM.

1. The Plaintiff is the Managing Owner and part Owner of the steamship X., of Y., suing on behalf of himself and other the Owners of the said steamship.

2. On or about the 27th February, 19 , whilst the said steamship was in the Port of Z., laden with a cargo of coals and coke, in all respects seaworthy and about to proceed to sea on a voyage thence to W., the Defendant, by a person claiming to be duly appointed in that behalf, wrongfully and improperly and without reasonable and probable cause detained the said steamship or caused the detention and survey of the said ship on the alleged ground that the said ship was overladen, whereas in fact she was not overladen but was safely and properly laden, and the Defendant, by such persons as aforesaid, wrongfully and

improperly required and caused a large quantity of cargo to be discharged out of the said steamship before releasing the said steamship or allowing her to proceed upon the said intended voyage.

3. After the said steamship had been detained, surveyed and lightened as aforesaid, the Defendant wrongfully and improperly detained or continued the detention of the said steamship for and until the payment or deposit of a sum of 10*l.* or otherwise by threat of detention or continued detention compelled the Plaintiff to pay or deposit the said sum alleged to be due from the Plaintiff to the Defendant in respect of the said detention and survey.

4. By reason of the premises the Plaintiff was deprived of the use and benefit of the said steamship, and was put to costs and expenses and sustained loss of freight.

The Plaintiff claims 500*l.*

DEFENCE.

The Defendant says that:—

1. He is being sued as Secretary of the Board of Trade pursuant to section 460 of the Merchant Shipping Act, 1894, and not otherwise.

2. On , the X. being a British ship, and in the Port of Z., was, under section 459 of the said Act, provisionally detained by C. (a detaining officer appointed under the said section), who then had reason to believe on the complaint of D. and E. that she was unsafe within the meaning of the said Act by reason of overloading.

3. The said ship was thereafter lightened by the Plaintiff by the removal of cargo from her to such an extent that on she was no longer unsafe as aforesaid, and was thereupon on the said date released by the said C.

4. It has not appeared, and cannot be made to appear, that there was not on within the meaning of section 460 of the said Act, reasonable and probable cause by reason of the condition of the ship, or the act or default of the Owner, for the said provisional detention of the ship.

5. Save as aforesaid, the Defendant denies each and every of the allegations in paragraphs 1, 2, 3, and 4 of the Statement of Claim.

Pleadings in an Action against the Trustees of the British Museum for Libel.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

Between A. B. - - - - - and

THE TRUSTEES OF THE BRITISH MUSEUM AND C. D. - Defendants.

STATEMENT OF CLAIM.

1. The Plaintiff, A. B., is

2. The Defendants are a corporation constituted by the Act of 26 Geo. II. c. 26, and as such are the owners and managers of the British Museum. The Defendant, C. D., is the Principal Librarian of the British Museum.

3. In the month of 19 , and for a long time previously the Defendants falsely and maliciously published, or caused to be published of and concerning

the Plaintiff, certain printed matters in the form of a book [*details of alleged libel set out*].

4. By reason of the premises the Plaintiff has been greatly injured in his character and reputation and he has been greatly pained and rendered ill, and the Plaintiff has been otherwise damnified, and the said damage is continuing.

The Plaintiff claims:—

1.—1,000*l.* damages.

2.—An injunction to restrain the Defendants from continuing to publish the book mentioned in paragraph 3 hereof, and all other books containing similar libels on the Plaintiff.

DEFENCE.

1. The Defendants are not the owners and managers of the British Museum, nor have they any interest therein except as provided by the statute 26 Geo. II. c. 22, to which they refer. The Defendants, the Trustees of the British Museum, are Trustees for putting the said Act into execution.

2. The Defendants did not nor did either of them publish or cause to be published the words complained of or any part thereof as in the Statement of Claim respectively alleged or at all.

3. The words complained of do not bear the meaning alleged by the Plaintiff.

4. The said book was placed in the library of the British Museum under and by virtue of the powers conferred and duty imposed upon the Defendants by the aforesaid statute and subject to the rules and regulations made by the said Trustees in that behalf under the said statute, and none of the Defendants had any knowledge of the contents of the said book, or that it contained any libellous matter, although the Defendants exercised reasonable and proper care in the matters aforesaid, which is the alleged publication.

5. By the aforesaid statutes the Trustees are empowered to make such statutes, rules and ordinances as they think fit for the custody, preservation and inspection of every part of the several collections within the British Museum, and otherwise to make byelaws and ordinances for the purposes of the said Act, and in pursuance of the powers aforesaid the said Trustees have, with reasonable and proper care, made such rules and regulations for the management of the library of the said Museum and the inspection of the books therein, as they in the discretion given to them by the said statute deem to be consistent with the duty imposed upon them as Trustees of the said Museum for the public and in the public interest. The said books were placed in the library of the said Museum subject to the said rules and regulations and without malice, which is the alleged publication, and if the same constitutes a publication of the alleged libels (which is denied) the Defendants will contend that the occasion was privileged by reason of the matters aforesaid.

6. In all things relating to the management of the British Museum, and in particular the library thereof, and the placing and inspection of books therein, including the book mentioned in the Statement of Claim, the Defendants acted under the authority of the aforesaid statute and in pursuance of the duties imposed upon them thereby and without negligence.

BOOK II.

Proceedings on the Revenue side of the King's Bench Division.

Part I.

Crown Debts and their Recovery.

CHAPTER I.

THE NATURE OF CROWN DEBTS.

It is necessary, for the purpose of understanding the older authorities, to observe the distinction between debts or duties not of record, sometimes called debts or duties by matter *in pais* or *in fait*, and debts of record. Further, debts of record, in the case of the Crown, may be either debts of judicial record or debts of private record (the usual meanings of debts of record), or debts of record by office found (called by Manning, Exch. Pr. (ed. 2), p. 1, debts of ministerial record). These last are debts which are made of record by an inquisition issued on behalf of the Crown, as in the case of an escheat, and they differ from debts of judicial record in that it is open to the person charged to traverse them and defeat the Crown's title. As will be seen hereafter, however, in the case of a debt of judicial record and also of any other debt, on an affidavit of debt and danger or of debt and death, as the case may be, the Crown may proceed to immediate execution by a writ of extent or of *diem clausit extremum*. The ordinary procedure for the recovery of debts which are not of record is by information, in which, there being no record, the Attorney-General informs the Court that there is a debt due to the Crown and of the facts concerning it. In strictness, the proper way of suing on a debt of ministerial or private record is by *scire facias* (and to these may be added the case of a judicial record where a new party is sought to be charged: see Manning, Exch. Pr. (ed. 2), p. 2). But in recent times these distinctions do not appear to have been

completely preserved ; informations have become commoner, while *scire facias* has become much rarer, and consequently the Crown will be more inclined to proceed by information in the case of any debts, where it is not open to it, or it does not think it advisable, to proceed by a writ of immediate extent.

It is true that in *A.-G. v. Sewell* (1838), 4 M. & W. 77 ; 7 L. J. Ex. 245, it was held that arrears of assessed taxes could not be recovered by information in the nature of an action of debt, inasmuch as it was provided by statute that such arrears should be recoverable as "a debt upon record," but that they must be recovered either by *scire facias* or by extent, or by filing an information upon the record itself ; but it seems to the author unlikely that the Court at the present day would uphold such an objection if by chance it should be made. Compare *A.-G. v. Snow* (1721), Bunb. 96.

The particular statutory provisions on which *A.-G. v. Sewell* was based are now repealed, but a similar provision (not repealed) will be found with regard to consideration money payable under the Land Tax Redemption Act, 1813 (53 Geo. III. c. 123), in Sched. E. (3) of that Act.

There is usually little doubt whether a debt is a Crown debt or not, but one or two special cases may be mentioned. Thus, in the recent case of *Bishop of Rochester v. Le Fanu*, [1906] 2 Ch. 513 ; 75 L. J. Ch. 743, it was held that the annual sums payable by a bishop in commutation of first fruits and tenths, though now collected and administered by the Governors of Queen Anne's Bounty, are still Crown debts and enforceable by writ of extent. The Army Prize Money Act, 1832 (2 & 3 Will. IV. c. 53), s. 50, specially provides that prize and bounty moneys, grant, or other moneys in the nature thereof, payable in manner mentioned in the Act, shall be deemed to be public moneys in the hands of any persons receiving or detaining the same.

In *Bell v. Tape* (1833), not reported, cited in *Keily v. Murphy* (1837), Sau. & Sc. 479, at p. 488, it was held that the recognisance of a tenant under the Court and his sureties was not a debt due to the Crown, and *Creed v. Creed* (1841), 4 Ir. Eq. R. 299, is to the same effect.

In *In re Smith* (1876), 2 Ex. D. 47 ; 46 L. J. Ex. 73, it was decided that an appellant, in the House of Lords, whose recognisance to pay the respondents' costs had been estreated, was a debtor to the Crown in respect of such costs, although it was the Crown's practice to hand over the money recovered to the person entitled.

In *In re Dalton, E. p. Usher* (1809), 1 Ball & B. 197 ; 2 Moll. 442, it was held that a recognisance given by a guardian in the matter of a

minor was not a debt due to the Crown, in spite of the form of the security; but in *R. v. Chambers* (1843), 11 M. & W. 776, the Court was of opinion that a bond given to the Crown by the committee of a lunatic was within 33 Hen. VIII. c. 39, and the Crown was entitled to treat it as matter of record, and have a *scire facias* thereon (a form of pleadings on such a *scire facias* is printed below, p. 281). The point had been raised but not decided in *R. v. Lamb* (1824), 13 Price, 649.

It is a general principle that a person becomes an immediate debtor to the Crown, if any money, goods or chattels belonging to the Crown come into his hands. "If any one is accountant to the King, or if any money, or goods or chattels personal of the King come to the hands of any subject by matter of record, or by matter *in fait*, the land of such subject is charged therewith and liable to the seizure of the King, into whatsoever hands it comes afterwards, be it by descent, or purchase, or otherwise." (*Candish's Case* (1560), cited in Plowd., at p. 321; reported in Sav. 12, pl. 33; Dy. 224 b.)

The early cases are examined in *R. v. Smith* (1810), Wight. 34. The same point is to be found in *R. v. Wrangham* (1831), 1 Cr. & J. 408; 9 L. J. (O. S.) Ex. 124, in the case of an insurance agent who had received money for insurance duties which belonged to the Crown. It was held, that though he was primarily bound to account to his employers and had given a bond for that purpose, he was also an immediate debtor to the Crown. This follows *R. v. Painter* (1591), 4 Leon. 32, pl. 89. In *Wilde v. Fort* (1812), 4 Taunt. 334 (below, p. 159), the person in question seems to have held an official Government position and not merely to have received Crown property in a casual way. (See *Craufurd v. A.-G.* (1819), 7 Price, 1, a case dealing with the same class of officials.)

Cases in which bankers were held liable to repay to the Crown money received in the course of their business are: *R. v. Ward* (1836), 2 Ex. 301, n.; *R. v. Adams* (1848), 2 Ex. 299; and *In re West London Commercial Bank* (1888), 38 Ch. D. 364; 57 L. J. Ch. 925. A similar case was *A.-G. v. Lambton* (1904), not reported.

Quære, whether it is necessary that the recipient should know that the money belongs to the Crown. It was held in *Dodington's Case* (1597), Cro. Eliz. 545, that "in every other case where he receives the Queen's money, knowing it to be the Queen's money, he is chargeable: but if he received it in payment, not knowing it was her money, and whereof by intendment he had not any conusance, it is otherwise." This resolution does not appear so fully in the citation of the same case in the *Earl of Devonshire's Case* (1607), 11 Rep. 89 a, at pp. 90 b, 92 a. But, on the other hand, in *A.-G. v. Perry*-

(1734), 2 Com. 481, money belonging to the Crown was recovered as money received to the King's use from a third party, who, though the money came to him from the Crown's officers, was innocent of the offence which made the sum to be recoverable by the Crown. The question of the necessity of knowledge in the recipient was mentioned in *In re West London Commercial Bank* (1888), 38 Ch. D. 364; 57 L. J. Ch. 925, but not decided. In *R. v. Ward* (1836), 2 Ex. 301, n., Parke, B., stated the law to be: "Any one is in privity with the Crown who knows that the money which he receives is the money of the Crown," but the Court discharged a rule to set aside an extent based on affidavits alleging such ignorance. See also *Johnson v. R.*, [1904] A. C. 817, 819, 823; 73 L. J. P. C. 113, where some of these cases are cited *arguendo*, and the remarks of the Board; and Price, Exch. Pr. pp. 214, 215.

CHAPTER II.

THE RECOVERY OF CROWN DEBTS.

Recovery of Crown Debts in General.

REFERENCE must be made to the Exchequer Court Act, 1842 (5 & 6 Vict. c. 86); the Crown Suits Act, 1855 (18 & 19 Vict. c. 90); the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21); and the Crown Suits, &c. Act, 1865 (28 & 29 Vict. c. 104), which are all printed below at pp. 663, 673, 676, 691, and are fully discussed in the following Parts of this Book. See also above, pp. 142, 143.

As to debts arising in connection with the Inland Revenue and Customs in particular, see the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36); and the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), printed in part below, at pp. 716, 740; and the dissertations above, at pp. 60, 68, and below, at pp. 172, 175, with the other statutory provisions there cited.

1 Anne, c. 2 (st. 1, c. 8, Ruff.), s. 4, provides for the continuance of any proceedings for any debt or account due to the Crown for or concerning any lands, tenements, or other revenue belonging to the Crown, in spite of the demise of the Crown.

The Parliamentary Privilege Act, 1737 (11 Geo. II. c. 24), s. 4, provides that no proceeding in law or equity against the King's original and immediate debtor for the recovery of any debt or duty originally and immediately payable to the Crown, or against any accountant to the Crown, or the execution thereof, shall be impeached, stayed or delayed in any Court in Great Britain or Ireland by or under colour of any privilege of the Parliament of Great Britain. But the person of any such debtor or accountant, being a peer or lord of Parliament of Great Britain, or (during the continuance of the privilege of Parliament) a member of the House of Commons, is not to be liable to be arrested or imprisoned by or upon any such proceedings. Compare the form printed below, p. 782.

As to the regular issue and stay of process to levy fines, issues, amerciaments, penalties and forfeited recognisances, see the Fines Act, 1833 (3 & 4 Will. IV. c. 99), ss. 32, 33, and the Queen's Remembrancer Act, 1859, s. 23 (p. 680).

The Fines Act, 1833, s. 36, provides a procedure where the

Treasury neglect or refuse to pay any fines, &c. to a claimant, or if such claimant is otherwise aggrieved. He may apply in a summary way by petition to the King's Bench Division, setting forth the nature of his claim, and the Court can call the proper parties before them, decide the matter, and award costs. By sect. 35 a similar application may be made against a person to whom the Treasury has paid fines, &c.

This procedure was adopted not long ago in *R. v. Nottingham Corporation* (1897), 13 T. L. R. 580. There being a dispute as to the title to certain fines and recognisances in the borough of Nottingham, the Treasury ordered them to be paid over to the proper official on behalf of the Crown, and the corporation then lodged their petition under the Fines Act, 1833, s. 36, in the Queen's Remembrancer's Department. It was entitled in the matter of the Act, "and in the matter of a claim by the corporation to certain fines and forfeited recognisances." It then ought to have continued as in the heading of an English information (see p. 314), with the substitution of "humbly complaining shew" for "informing sheweth," and of the corporation for the Attorney-General.

The Lord Chief Justice ordered the petition to be served on the Treasury, and by order made by a judge in chambers by consent a special case was stated under Ord. XXXIV. on which judgment was duly given.

The general subject of the estreat of recognisances in superior and other Courts is fully treated in Archbold's Criminal Pleading, Evidence and Practice (ed. 23), pp. 117—120, to which the reader is referred. See also the Queen's Remembrancer Act, 1859, ss. 32—39, below, p. 681.

Process on Bonds.

The Act 33 Hen. VIII. c. 39, which governs this matter, is printed below, p. 651. By sect. 36, all suits, processes, judgments, decrees and executions thereafter to be taken, pursued or given for the King in the Courts mentioned in sect. 37 (which include the Exchequer) upon obligations and specialties to the King's use, are to be of the same force and effect against all the persons bound in the obligations and specialties and their representatives as statutes staple have been used to be taken, exercised and executed against lay persons. The King in such proceedings is to recover his debt, costs and damages in the same manner as other (*sic*) common persons. [The meaning of statutes staple is explained by 27 Edw. III. st. 2, c. 9.]

By sect. 37 (see also sect. 58) suits for the King's debts are to be in the Court of Exchequer or other Court where they become due, and

may be made by *capias*, extent, subpoena, attachment and proclamation of allegiance, as the Court thinks expedient.

Sect. 39 gives such Courts power to fine sheriffs, and provides that cases may be tried by oral or written evidence, or by such other methods as the Court thinks expedient.

Sects. 40, 41, 42 provide for the cancelling of bonds to the King without special warrant, on proof of payment, such cancellation to be a sufficient discharge as against the King, his heirs and successors.

Sects. 52—56 provide that lands descending to heirs in fee or tail shall be charged with debts to the King by specialty, though the heir be not named therein, and that the King may recover against the executors and administrators, having assets, of debtors so indebted, and that lands so chargeable which are in the possession of several persons other than the obligor shall be wholly and not severally chargeable. An exception is made in the case of hereditaments *bonâ fide* recovered by a previous title, and it is provided that persons shall be permitted to plead and establish that they are not chargeable with the debt alleged. By 34 & 35 Hen. VIII. c. 2, s. 5 (see p. 158), such heirs have a remedy over against the executors and administrators of the debtor.

Sect. 57 preserves the rights and privileges of the Duchy of Lancaster.

As to the validity of extents on statutes staple, although part of the lands or tenements extendible are omitted in the writ, see 16 & 17 Car. II. c. 5.

The Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 119, applying to suits against the sureties of a collector of land tax, income tax or inhabited house duty on a bond entered into under that Act, provides that the collector's account or sworn schedule shall be sufficient evidence of the receipt by him of sums which he has collected or ought to have collected.

Sect. 120 provides for an assessment to defray costs adjudged to be paid by the Land Tax Commissioners, or the Commissioners for the General Purposes of the Income Tax in any proceedings on such a bond.

The Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 165—167, provides that all bonds relating to the Customs or matters incidental thereto are to be taken to or for the use of the King, and that all bonds and other securities entered into by any person for the performance of anything relative to the Customs or incident thereto are to be valid in law, and upon breach may be sued and proceeded upon in the same manner as any bond expressly directed or given by or under the provisions of the Customs Acts.

There are also provisions for the validity of bonds given by minors, for the entering up of satisfaction on bonds by the Commissioners of Customs and their discharge, and for the exoneration of the bonds of obligors.

These provisions are applied, *mutatis mutandis*, to all bonds and other securities entered into or given to the King, his heirs or successors, by the Crown Debts and Judgments Act, 1860 (23 & 24 Vict. c. 115), as amended by the Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 8. For this purpose the principal officers of the Department concerned, or, if there be none, the Treasury, are substituted for the Commissioners of Customs.

Bonds given by the receivers of the Crown's land revenues have the effect of a statute staple to His Majesty by the Crown Lands Act, 1829 (10 Geo. IV. c. 50), s. 85; and see the Crown Lands Act, 1832 (2 & 3 Will. IV. c. 1), s. 9.

As to the giving of bonds by persons appointed to offices of public trust in general on pain of forfeiture of office, see the Government Offices Security Act, 1810 (50 Geo. III. c. 85), ss. 1, 7. By the Security of Public Officers Act, 1812 (52 Geo. III. c. 66), ss. 8, 10, such persons are to give notice of the death or bankruptcy of their sureties, and provide other sureties under penalties of forfeiture of a fourth part of the sum secured and forfeiture of office respectively, to be recovered by action of debt or information by the Attorney-General or the Lord Advocate, but such penalties or forfeiture may be remitted by the Crown. The latter Act, by sect. 1, extends the former Act to Scotland.

The Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), s. 33, provides that securities made in pursuance of that Act are to be made payable to the King's use, and may be recovered as a specialty debt due to the Crown, as if made under 33 Hen. VIII. c. 39, but no one is to be liable for any larger sum than that which he is expressed to be bound to pay. The Public Works Loan Commissioners may, if they think it necessary or expedient, issue a warrant to the proper officer to enforce payment, and, if necessary, to enter satisfaction, and are to have control over the proceedings, which are not to be discontinued, quashed or abated without their written authority. On the production of such warrant a competent Court or a judge thereof may direct the issue of an immediate writ of extent or *diem clausit extremum*.

It now becomes necessary to refer to some decisions on 33 Hen. VIII. c. 39. A general exposition of its effect will be found in *Anon.* (1563), Jenk. 226, pl. 89, in *Sir Thomas Cecil's Case* (1597), 7 Rep. 18 b, and in *A.-G. v. Andrew* (1655), Hard. 23. It extends only to debts

originally and immediately due to the King by judgment, recognisance, obligation, or other specialty, and not to debts which are due to subjects and accrue to the King by attainder, gift, outlawry, &c. (*Lord Anderson's Case* (1597), 7 Rep. 21a.)

The form of the bonds need not be exactly such as the statute provides, the words of the statute in this behalf being merely directory, and intended merely to ensure that bonds taken to the King, which were to be specially privileged, should be taken in his name and not in the name of common persons to his use. (*Scrogs v. Gresham* (1584), Moo. 193; And. 129; *R. v. Bradford* (1714), 2 Ld. Raym. 1327; 1 Dick. 24; *Yale v. R.* (1721), 6 Bro. P. C. 27; *R. v. Ellis* (1849), 4 Ex. 652; 19 L. J. Ex. 77.) The Court will take judicial notice of bonds within the statute, though not set out in the pleadings. (*R. v. Ellis, ubi sup.*) A bond made to the King in his political capacity subsists to his successor. (*R. v. Bradford, ubi sup.*) A bond given to the Crown by the committee of a lunatic is within the statute. (*R. v. Chambers* (1843), 11 M. & W. 776.)

Recovery of Rents.

33 Hen. VIII. c. 39, ss. 43, 44, provides for the recovery of rents due under royal grants, and of the forfeitures imposed for non-payment thereof.

Charge of Crown Debts on Lands.

33 Hen. VIII. c. 39, ss. 52, 54—56, provides that Crown debts by judgment or specialty shall bind lands descending to heirs in fee or tail, though heir be not named therein, with the further provisions set out above on p. 148.

The charge on the lands of public accountants is dealt with below, p. 158.

As to the necessity of registration, see below, p. 152.

The Judgments Act, 1839 (2 & 3 Vict. c. 11), ss. 10, 11, provides that the Treasury, on payment of such sum of money as they may require into the Exchequer to be applied in liquidation of the debt or upon such other terms as they may think proper, may certify that any hereditaments of a Crown debtor or accountant shall be held by a purchaser or mortgagee and his successors discharged from all claims on the part of the Crown in respect of any debt of the debtor or accountant, and, in the case of leases for fines, may certify in a similar way in favour of the lessees, without prejudice to the rights of the Crown against the reversion. Such certificate is not to affect the Crown's right to levy the whole debt on any other hereditaments which would have been liable, had no certificate been granted.

The Judgments Act, 1855 (18 & 19 Vict. c. 15), s. 11, provides that a legal or equitable estate vested in a purchaser or mortgagee for valuable consideration shall not be extended or taken in execution on behalf of the Crown in respect of matters whereby a mortgagee, who has been paid off at the time of the conveyance of the estate, has become a debtor or accountant to the Crown.

A bond under 33 Hen. VIII. c. 39, binds all lands of the obligor over which he had a disposing power at the time he entered into the bond. The giving of such bond is a voluntary act on his part, and he cannot afterwards, by exercising his disposing power, defeat the right of the Crown. (*Ellis v. R.* (1851), 6 Ex. 921; 20 L. J. Ex. 348.) But it will not bind land conveyed *bonâ fide* and for consideration before the Crown debt was incurred by the person conveying. (*Foskew's Case* (1587), 2 Leon. 90.) Nor will a simple contract debt to the Crown, due from a person who does not hold an office constituting him a public accountant, bind his lands in the hands of a *bonâ fide* purchaser without notice (*R. v. Smith* (1810), Wight. 34), and similarly, where the title deeds of such lands have been deposited *bonâ fide* and without notice by way of equitable mortgage, the Crown must satisfy the lien of the equitable mortgagee before it takes possession of the proceeds of sale of such land. (*Casberd v. Ward* (1819), 6 Price, 411.) A term attendant on an inheritance is bound as well as the inheritance. (*Nicholls v. How* (1700), 2 Vern. 389.) See also below, pp. 168, 196.

As to the general principle whereby the lands of persons into whose hands Crown property has come are bound, see above, p. 144.

It was held in *Sir William Fleetwood's and Sir Roger Aston's Case* (1616), Hob. 45, that where the King took a public accountant's land and re-granted it, it was freed from his Crown debt, whether such debt were incurred before or after the re-grant.

It is said that the Crown may levy on a lessee's land for his lessor's debt. (Y. B. P. 22 Edw. IV. pl. 29.)

Sale and Conveyance of Crown Debtor's Lands.

As to the sale of land of public accountants under 27 Eliz. c. 3, and the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 42, see pp. 158, 159.

The Crown Debtors Act, 1785 (25 Geo. III. c. 35), s. 1, provides that the Exchequer, on the application of the Attorney-General, may order the hereditaments of a Crown debtor, which have been extended, to be sold.

They are to be conveyed by the King's Remembrancer, and the purchaser and his successors are to hold such hereditaments, not only

against the extent, but also against the Crown debtor and his sureties and persons claiming under him, unless by a title paramount to the extent. This section is extended by the Crown Suits, &c. Act, 1865, s. 50 (p. 700), to land taken in execution by any process of execution issued by any Court of law or equity to enforce a Crown debt.

A form of conveyance is printed below, p. 279.

Registration of Crown Debts.

The Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 22, applies the provisions as to registration contained in the Judgments Act, 1839 (2 & 3 Vict. c. 11), and the Judgments Act, 1855 (18 & 19 Vict. c. 15), to Crown debts. Now, by the Land Charges Act, 1900 (63 & 64 Vict. c. 26), s. 2, a judgment or recognisance, whether obtained or entered into on behalf of the Crown or otherwise, shall not operate as a charge on land, or on any interest in land, or on the unpaid purchase-money for any land, unless a writ or order for the purpose of enforcing it is registered under the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 5. This section applies to any inquisition finding a debt due to the Crown, and any obligation or specialty made to the Crown, and any acceptance of office from or under the Crown, as it applies to a judgment.

Recovery of Crown Debts out of the Jurisdiction.

The Crown Debts Act, 1801 (41 Geo. III. c. 90), ss. 1—4, provides that a copy of any account duly audited, declared or recorded in the Exchequer, or any judgment or decree of the Exchequer, may, on application by the Crown, be exemplified and transmitted, under the seal of the Court, to the Court of Exchequer in Ireland, where it is to be enrolled, and process issued against the person and the real and personal estate of the debtor in Ireland, and the inverse process is to be followed in the case of accounts and judgments in Ireland. The Queen's Remembrancer Act, 1859, s. 24 (p. 680), provides for the transmission of a copy of the record of any debt of record in the Exchequer, where the person or estate and effects of the debtor are in Scotland or Ireland, and for execution or other process thereon.

As to service in any part of the United Kingdom in proceedings under the Inland Revenue or Customs Acts, see the Customs Consolidation Act, 1876, s. 248 (p. 724), and the Inland Revenue Regulation Act, 1890, s. 23 (p. 740). The latter section further provides for the punishment of persons, who fail to appear, by the High Court

having jurisdiction in that part of the United Kingdom where process was served. See, too, the Crown Suits, &c. Act, 1865, ss. 37, 42, and below, p. 231.

The East India Company Act, 1813 (53 Geo. III. c. 155), s. 111, which has not been repealed, provides for the recovery of Crown debts and the prosecution of other causes of action in India by proceedings at law or in equity by the Advocate-General of the Company. (See also, as to Crown debts in India, *Secretary of State in Council of India v. Bombay Landing & Shipping Co., Ltd.* (1868), 5 Bom. H. C. O. C. J. 23, and *Judah v. Secretary of State for India in Council* (1886), I. L. R. 12 Cal. 445.)

Assignment of Debts to the Crown.

7 Jac. I. c. 15, provides that no debt shall be assigned to the Crown which did not grow due originally to the King's debtor or accountant *bonâ fide*; otherwise the assignment is to be void. (See *Breadman v. Coales* (1620), Hob. 253.)

Apportionment of Crown Debts.

The Crown is not bound by the Apportionment Act, 1870 (33 & 34 Vict. c. 35). (See *Bishop of Rochester v. Le Fanu*, [1906] 2 Ch. 513; 75 L. J. Ch. 743.)

Arrest of Crown Debtor.

The Debtors Act, 1869 (32 & 33 Vict. c. 62), does not apply to Crown debts, and therefore a Crown debtor can be arrested, as though that Act had not been passed. (*A.-G. v. Edmunds* (1870), 22 L. T. 667.) This was a case of a judgment debtor at the suit of the Crown, and the same principle was applied to an appellant in the House of Lords, whose recognisance to pay the respondents' costs had been estreated, in *In re Smith* (1876), 2 Ex. D. 47; 46 L. J. Ex. 73.

Distress.

The King will not seize any land or rent for any debt as long as the debtor's goods and chattels suffice to pay the debt and the debtor himself be ready to satisfy therefor. His sureties are not to be distrained upon as long as the principal debtor is sufficient, and when they have been called upon to pay, they may have the debtor's lands and rents, until they are satisfied, unless he can show a discharge. (25 Edw. I. (9 Hen. III., c. 8.) The King will not take over-

great distresses for his debts, nor will he distrain upon beasts of the plough if there are others, and the distress shall be released if the debtor provides a proper surety. (28 Edw. I. c. 12.) But see what is said below as to the power to take all a debtor's land and goods at once by an extent (pp. 193, 196, 197).

Sheriff's Duties and Fees.

When a sheriff or his officer or other person employed in collecting by process from any Court any debt due to the Crown receives from any person a sum due to the Crown, he shall give a receipt to such person, and at the next account shall procure the effectual discharge of such person. An officer of a sheriff receiving such sum is to account for it to the sheriff, and the latter is to give a receipt. In case of default, the sheriff and his heirs, executors and administrators shall be liable to pay any damages suffered by a debtor in consequence of such default. (Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 11.)

By sect. 20 of the same Act, a sheriff is entitled, in respect of all sums due to the Crown and collected by him under process of any Court, to an allowance of 1s. 6d. in the pound for every sum not exceeding 100l., and 1s. on each pound exceeding 100l. Where a sheriff seizes personal estate for any sum due to the Crown and dies, or is superseded before sale, and his successor sells the same, the poundage and fees are to be apportioned between him and his successor, on application, by a judge of the High Court.

A coroner acting as sheriff is entitled to the same fees and poundage, by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 15.

It will be observed that sect. 20 of the Sheriffs Act, 1887, only gives the sheriff poundage on sums "collected" for the Crown. Apart from statute, the sheriff has no right to poundage or fees against the Crown. (See *Lake v. Turner* (1766), 4 Burr. 1981.) 3 Geo. I. c. 15, s. 3 (repealed by the Sheriffs Act, 1887, s. 39, and Sched. III.), gave him poundage at the above rates on sums "levied or collected" for the Crown, and under that provision it was held in *R. v. Fry* (1793), 3 Anst. 718, n., that a sheriff was entitled to his poundage, though the debt had been paid direct to the officers of the Crown and the levy had never been completed. (See also *Alchin v. Wells* (1793), 5 T. R. 470; *R. v. Goodchild* (1816), West on Extents, 237.) The word "levied" is omitted in the Act of 1887, so apparently these authorities no longer apply, and the sheriff is only entitled to poundage where he actually collects the Crown debt. This was the view taken by the Crown in the last case where the question arose, *R. v. Edgecumbe* (1898), not reported. The debt there was not collected by the sheriff, but a sum was accepted by

the Crown by way of compromise. The Crown thereupon, while not admitting that the sheriff was entitled to anything, allowed him out-of-pocket expenses and certain other charges and poundage on the sum actually received by the Crown, but refused to allow anything to the under-sheriff. Where extents issued in two counties at once, and the debt was paid directly to the officers of the Crown, though upon the compulsion of one of the levies, the poundage was apportioned between the two sheriffs. (*R. v. Fry* (1793), 3 Anst. 718, n.) Where both the sheriffs seized, but the defendant paid the debt to one of them before a *venditioni exponas* issued to either, the one who received the debt was awarded all the poundage. (*R. v. Barber* (1796), 3 Anst. 717.) If the sheriff thinks himself entitled to any extra allowance, he must apply by motion, on which a rule may be granted to the persons interested to show cause. (*R. v. Jones* (1814), 1 Price, 205; *R. v. Mainwaring* (1815), 2 Price, 67; *R. aux. Gardner v. Fereday* (1817), 4 Price, 131.)

The Court disallowed a sheriff's claim for an auctioneer's commission of 5 per cent. for selling goods by auction in *R. v. Crackenthorp* (1794), 2 Anst. 412, and similarly, in *R. v. Jones* (1830), 1 Cr. & J. 140; 9 L. J. (O. S.) Ex. 2, it disallowed the retention by the sheriff of a deposit of 5*l.* paid by an agent of the Crown to indemnify the sheriff against the expenses of a sale by auction.

CHAPTER III.

PUBLIC ACCOUNTANTS.

Recovery by the Crown of Balances and Interest.

THE Public Accountants Act, 1800 (39 & 40 Geo. III. c. 54), provides (sect. 1), that where public accountants die, or go out of office, indebted to the Crown in respect of that office to the amount of 500*l.* or upwards, the proper officer is to compute interest at 5 per cent. on such sum from a period of three months after the accountant's going out of office, or twelve months after his death, and give him or his representatives notice of the total amount of money and interest due, which may be recovered by the Crown as a debt. Such accountant or his representative may, however, apply by motion to the Exchequer within six months after the notice by way of appeal against the charge for interest, but such appeal is not to prevent or delay the Crown's suit for the balance, exclusive of interest.

After the expiration of such six months, or on failure of such appeal, interest is to be further computed up to such date and be added to the original sum due (sect. 2). The whole sum due, including the interest, so far as such sum and interest are unpaid, is also to bear interest (sect. 3). Sureties are not to be charged with interest until they have been called upon to answer for their principal's default (sect. 8).

Balances due from officers of their respective Departments are to be recovered by the Inland Revenue Commissioners, the Customs Commissioners and the Postmaster-General (sect. 12).

The Crown may control, suspend, or prevent process against any public accountant, but the Treasury must make a return of such cases to both Houses of Parliament within fourteen days after the commencement of every session (sects. 15, 16). By sect. 11, the Treasury may allow public accountants interest at 5 per cent. on sums of 500*l.* and upwards advanced by them for the public service and remaining due to them on the balance of their accounts, not being accounts current.

A more flexible provision is contained in the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 41, whereby every

accountant (see sect. 34), on the termination of his charge as such accountant, or, in the case of a deceased accountant, his representatives, shall forthwith pay over any balance due to the public to the public officer authorised to receive it, and in all cases in which it appears to the Comptroller and Auditor-General that such a balance has been improperly and unnecessarily retained, he shall report to the Treasury, and the Treasury shall take such measures as they think expedient for recovering the amount, with interest on the whole or part for such period and at such rate not exceeding 5 per cent. as they think just and reasonable. (See also Exchequer Rule 129, p. 772.)

The general liability of public functionaries to account for interest is dealt with in *Craufurd v. A.-G.* (1819), 7 Price, 1.

Receivers of the Crown's land revenues, who retain sums exceeding 500*l.*, are chargeable with interest at such rates not exceeding 10 per cent. as the Commissioners of Woods and Forests appoint. (Crown Lands Act, 1829 (10 Geo. IV. c. 50), s. 84.)

Where army agents do not pay balances declared to be due from them within a month, such balances are to be deemed to be a debt of record to the Crown, and recoverable as such. (Regimental Accounts Act, 1808 (48 Geo. III. c. 128), s. 3.)

Yeomanry officers, or other persons belonging to corps of yeomanry, are not to be deemed public accountants by reason of moneys received by them under the Yeomanry Act, 1804 (44 Geo. III. c. 54) (Yeomanry (Accounts) Act, 1804 (44 Geo. III. c. 94), as amended by the Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 51, and Sched. (vi)).

A Clerk of the Patents, who received and paid public moneys, was held to be a public accountant in *A.-G. v. Edmunds* (1868), L. R. 6 Eq. 381; 37 L. J. Ch. 706. Compare *Craufurd v. A.-G.* (1819), 7 Price, 1, at p. 45.

As to collectors of land tax, income tax, and inhabited house duty, by the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), ss. 115—118, surveyors may report the default of collectors, and the Land Tax Commissioners, or the Commissioners for the General Purposes of the Income Tax, may examine such collectors on oath, and may make an order for the payment by them of the sums found due. Collectors neglecting or failing to perform their duties may be dismissed.

The Commissioners may imprison the person, and seize all the estate of a defaulting collector in his hands, or in those of his heirs, executors, administrators, or assigns, and may sell it and satisfy the debt out of the proceeds, and may convey or assign the estate so sold, such sale to be effectual and valid in the same manner as a sale

in bankruptcy. It was held in *Casberd v. Ward* (1819), 6 Price, 411, that a collector of the assessed taxes of a parish, though liable to an immediate extent, was only a simple contract creditor till inquisition, and that he was not a public accountant within 13 Eliz. c. 4, s. 1.

As to the granting of an order in the nature of a *ne exeat regno* against a public accountant, see *A.-G. v. Mucklow* (1815), 1 Price, 289.

Charge of Crown Debts on Lands.

Under 34 & 35 Hen. VIII. c. 2, ss. 3, 4, 5, the heirs of collectors or receivers are only chargeable in respect of hereditaments which they have by descent in fee simple or fee tail, or by gift, or by any other assurance made to such heirs fraudulently by collectors or receivers, or their assigns, and the King is to have execution on such hereditaments only. Executors and administrators of collectors and receivers are to be charged only as executors and administrators are chargeable at common law in actions of debt. Heirs who are charged as above shall have an action of debt over against the executors and administrators of the collectors and receivers, and shall have execution of their goods and chattels in the hands of such executors and administrators at the time of action brought. The Act, by sect. 6, does not extend to collectors of customs.

By 13 Eliz. c. 4, s. 1, the lands of a person accountable to the Crown are liable for his debt as though he were bound to the Crown by a statute staple, and sect. 4 extends this liability to hereditaments purchased by such accountants for their own use in the names of others. These provisions, however (sect. 8), do not extend to accountants whose yearly receipts do not exceed 300*l.*, nor (sect. 10) to sheriffs, escheators, or bailiffs of liberties in respect of moneys received by reason of their offices. Sect. 11 gives persons, whose lands have been found by inquisition to have been fraudulently conveyed, power to traverse such inquisition and to recover their lands, on proof of their *bona fides*. By sect. 12, the sureties of the accountant are to be discharged *pro tanto* on the satisfaction of the Crown by the sale of such lands.

By 27 Eliz. c. 3, s. 1, such sale may be made after the death of the accountant, when the account is made or the debt is known in the lifetime of the accountant or within eight years after his death. Sect. 2 [repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125)] provided that a *scire facias* must first issue against the accountant's heirs; and by sect. 3 the provision is not to extend to hereditaments in the possession of persons who obtained them *bonâ fide*

or for value before the issue of the *scire facias*, nor to cases (sect. 7) where the accountant had in his lifetime received a *quietus* or discharge.

Sect. 5 provides for a special procedure against heirs, where the account ought to be made, or the debt is owing, in the Courts of the Duchy of Lancaster.

The two Acts of Elizabeth were repealed, so far as they relate to officers of Customs, by 6 Geo. IV. c. 105, s. 13.

The Judgments Act, 1839 (2 & 3 Vict. c. 11), ss. 10, 11 (see p. 150), provides for a certificate of discharge of hereditaments in favour of purchasers, mortgagees and lessees, though the debt or liability is not fully discharged; and by the Judgments Act, 1855 (18 & 19 Vict. c. 15), s. 11 (see p. 151), hereditaments vested in purchasers or mortgagees are not to be taken in execution in respect of the liabilities of mortgagees who are Crown accountants, but whose mortgages were paid off before the conveyance to such purchasers or mortgagees. Further as to the rights of mortgagees, see below, pp. 168, 196.

The estates of collectors of land tax, income tax, and inhabited house duty are liable under the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 118.

Where the estate of a public accountant has been sold under an extent, or under an order of the High Court, and the purchaser has paid his purchase-money into the hands of any public accountant authorised to receive it, the purchaser shall be wholly exonerated from all claims of the Crown in respect of such accountant's debt, although such purchase-money is not sufficient to discharge the whole debt. (Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 42.)

As to the effect of a re-grant of the estate, see above, p. 151.

The land of a public accountant is chargeable with his balances and arrears from the moment when he accepts his office, whether the actual receipt of the money takes place before he has conveyed the land or afterwards. (*R. v. Bishop of Sarum* (1583), Moo. 126; *Nicholls v. How* (1700), 2 Vern. 389; *Hatton's Case* (1593), cited 10 Rep. 55 b, 56 a; *Anon.* (1563), Jenk. 226, pl. 89.) For more recent instances, see *R. v. Rawlings* (1823), 12 Price, 834, and *R. v. Fernandes* (1823), 12 Price, 862.

It seems doubtful whether Lord Mansfield, C.J., in *Wilde v. Fort* (1812), 4 Taunt. 334, 345, intended to state that every person who had received money belonging to the Crown was within the statutes of Elizabeth; probably not, although his language is not very accurate. In any event, the person with whom he was there dealing held an official position, and was not a mere casual receiver of Crown property. The words of 13 Eliz. c. 4, s. 1, are no doubt very wide: "Receiver of

any sums of money imprest, or otherwise, for the use of the Queen's Majesty, her heirs or successors"; but their interpretation seems to be accurately expounded in the note to *Casberd v. Ward* (1819), 6 Price, 411, at p. 424. For the distinction between accountants and persons who have merely received Crown property, see *Candish's Case*, above, p. 144, and *R. v. Smith*, above, p. 151. It was stated by Heath, J., in *Wilde v. Fort*, *ubi sup.*, at p. 342, that an accountant's lands were liable at common law as well as under the statutes.

Appeals.

Where an accountant is dissatisfied with any disallowance or surcharge in his accounts made by the Comptroller and Auditor-General, he may appeal to the Treasury, who after such investigation, by oral examination or otherwise as they think fit, may order the relief of the appellant from such disallowance or surcharge wholly or in part. (Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 43.) A public accountant could also proceed by bill against the Attorney-General in the Exchequer, though not by petition and motion (*E. p. Durrand* (1786), 3 Anst. 743; *E. p. Colebrooke* (1803), 7 Price, 87), and instances of such proceedings will be found in *Craufurd v. A.-G.* (1819), 7 Price, 1, and *Colebrooke v. A.-G.* (1807), 7 Price, 146, though it appears from the former of these two cases that the Court would examine the principle on which the accounts in question were audited, but would not determine a mere question of *quantum meruit* as between the appellant and the Crown. For a somewhat similar proceeding in Chancery, which was dismissed as vexatious, see *Edmunds v. A.-G.* (1878), 47 L. J. Ch. 345.

It is not absolutely clear whether proceedings of this kind should now be on the Revenue side of the King's Bench Division and not in the Chancery Division (see the question of the transfer of the equity jurisdiction of the Exchequer to Chancery discussed below, p. 217), but probably they should be. (See the authorities cited on p. 217, and the *Case of the York Buildings Co.* (1740), 2 Atk. 56.)

Offences.

By 33 Hen. VIII. c. 39, ss. 48, 49 (pp. 658, 659), receivers or other accountable officers who fail to appear at the audit, or to make proper account, or to pay over their receipts, are to forfeit their offices and fees, and may be attached for the amount in their hands and for the penalty of their recognisance or bond.

34 & 35 Hen. VIII. c. 2, ss. 1, 2, provides that collectors and receivers are to pay over or tender receipts within three months, under penalty of 4s. per pound per month, to be recovered by action or bill by the King, and forfeiture of office.

False returns by collectors are made misdemeanours by the Embezzlement by Collectors Act, 1810 (50 Geo. III. c. 59), s. 2. In respect of felonies and misdemeanours, collectors of land tax, income tax or inhabited house duty are to be deemed to be employed in the public service of the Crown, and to be clerks, officers or servants of the Inland Revenue Commissioners. (Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 14 (2).)

Further, as to collectors of land tax, income tax and inhabited house duty, the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 121, enumerates a large number of offences punishable by penalties ranging from 10% to 100%, which are leviable from them in the same manner as duties.

CHAPTER IV.

THE PRIORITY OF CROWN DEBTS.

In Distress and Execution.

By 33 Hen. VIII. c. 39, s. 51, the King's suit or process is to be preferred before the suit of any other person, and he is to have the first execution for his debt before any other person, provided that the King's suit is taken and commenced or process awarded for such debt before judgment given for such other person.

As to land, apparently the effect of this statute and the common law was to give the subject precedence if he had completed his execution before process issued for the King, as in *A.-G. v. Andrew* (1655), Hard. 23, *Curson's Case* (1590), 3 Leon. 239, and *Hungate and Hill's Case* (1590), 3 Leon. 240. See *R. v. Mann* (1726), 2 Stra. 749 (*arguendo*). But this must now be taken subject to the statutes imposing on the King the necessity of registration, before his judgment, &c. can bind the land. (See above, p. 152.)

25 Edw. I. (9 Hen. III., Ruff.), c. 18, provides that in the case of a Crown tenant who dies a debtor to the Crown the sheriff may attach and enrol all his goods and chattels as found in the fee of which he was tenant, to the value of the debt as determined by a jury, and after the debt is satisfied the residue is to remain to the executors.

See also the Crown Suits, &c. Act, 1865, s. 51 (p. 701), which saves the priority of the Crown against the creditors of any Crown debtor or accountant.

Generally, "in case of an execution for a subject, whether it be an *elegit*, or *fiery facias*, or an extent, the goods and chattles of the party were bound from the teste of the writ, before the Statute of Frauds and Perjuries, by virtue of which statute the property of the goods of the party against whom a writ of execution is sued out, is not bound, but from the time that such writ is delivered to the sheriff, &c. to be executed. But this statute does not extend to the case of the Crown . . . Executions for the Crown have relation to the time of the execution awarded, and the goods and chattles of the party are bound from that time into whose hands soever they come." (*R. v. Arnold* (1710), Vin. Abr. Creditor and Bankrupt (z), per Price, B.)

But in the case of a debtor to a Crown debtor, the debt of the former is not bound from the teste of the extent, but only from the caption of the inquisition finding the debt. (*R. v. Green* (1729), Bunb. 265.)

The meaning of 33 Hen. VIII. c. 39, s. 51, is discussed in West on Extents, p. 154. He appears to be of opinion that "suit taken and commenced" refers to lands, and "process awarded" refers to goods. But it seems more reasonable to take "execution" as used both of land and goods, and to regard "suit taken and commenced" in its natural meaning, and "process awarded" as referring to process by immediate extent, where there has been no previous suit. If this be so, then the King takes priority in all cases except where the subject's judgment has been obtained before the commencement of the King's suit or the issue of his extent, or where it has been obtained after the commencement of the King's suit, but before process issued upon it or before process by immediate extent, and has been completely executed by sale of the goods before the teste of the King's process, or perhaps before its delivery to the sheriff. See Manning, Exch. Pr. (ed. 2), p. 44, and the cases which now follow, especially *R. v. Sloper* (1818), 6 Price, 114, and *Butler v. Butler* (1801), 16 East, 339.

The prerogative right of the Crown to priority is not limited to proceedings by writ of extent, but equally attaches to proceedings by distress (*A.-G. v. Leonard* (1888), 38 Ch. D. 622; 57 L. J. Ch. 860) or to the recovery of the amount found due to the Crown on a *scire facias* on a bond, with costs. (*In re Corley* (1889), 23 L. R. Ir. 249.) These principles must be read into the decisions which follow.

An extent tested after the delivery of a *fi. fa.* to the sheriff, or even after the distress, but before sale, prevails against the distress. (*R. v. Cotton* (1751), Park. 112; 2 Ves. Sen. 288; *R. v. Allnutt* (1807), 16 East, 278; *R. v. Giles* (1820), 8 Price, 293; *Giles v. Grover* (1832), 1 Cl. & F. 72; *R. v. Sheriff of Devon* (1819), 1 Chit. 643; *A.-G. v. Leonard* (1888), 38 Ch. D. 622; 57 L. J. Ch. 860.) This rule applies equally to an extent in chief and an extent in aid (*Giles v. Grover*, *ubi sup.*) and to a landlord's hypothec in Scotland. (*Ogilvie v. Wingate* (1792), 3 Pat. App. 273; *Robertson v. Jardine* (1802), Mor. Dict. 7891.) It is the sheriff's duty under the extent to seize the goods which have been taken under the *fi. fa.*, where the judgment has been obtained and the goods seized under it prior to the King's judgment but after the commencement of the King's process. (*R. v. Sloper* (1818), 6 Price, 114; *Butler v. Butler* (1801), 1 East, 338; *A.-G. v. Aldersey* (1785), 1 East, 341; see also *Thurston v. Mills* (1812), 16 East, 254.) But the Court has enlarged the time for making a return to the *fi. fa.* on the sheriff's

application, where there was a reasonable doubt whether or not the goods seized were covered by an extent. (*Wells v. Pickman* (1797), 7 T. R. 174; *R. v. Sheriff of Devon* (1819), 1 Chit. 643.)

See also, as to the King's priority on an extent, *Addlington v. Cann* (1744), 3 Atk. 142, 154, cited more fully below, p. 575.

In Scotland the Crown's privilege has been held even to extend to a case where the goods had been sold, but a warrant for payment to the landlord had not been granted. (*R. v. Johnston* (1809), 2 Bell, Comm. (ed. 7) 53.)

Secus, if the goods taken under the *fi. fa.* have been sold. The property in the goods has been completely altered, and it is the sheriff's duty on the Crown levy to return *nulla bona*, except as to those of the goods on which the Crown has an indefeasible lien by statute. (*A.-G. v. Fort* (1804), 8 Price, 364, n.; *Grove v. Aldridge* (1832), 9 Bing. 428.) This is the case even where the extent is tested on the day of the sale and delivered to the sheriff on that day after the goods have been delivered to the purchasers. (*Swain v. Morland* (1819), 1 B. & B. 370.)

A simple contract debt seized into the King's hands is to be preferred to bonds not paid before such seizure; *secus*, if the bond debts are paid by an administrator before seizure or notice of the King's debt. (*R. v. Allanson* (1687), Park. 260.) But the King's simple contract debt is to be preferred to a bond creditor's judgment which was obtained after suit taken or process awarded by or for the King. (*R. v. Dickenson* (1692), Park. 262.)

The Crown's title, however, is commensurate only with that of its debtor, and therefore, where in a lease there was a proviso for re-entry in case of extent or execution, the forfeiture was held to terminate the interest of the Crown as well as that of the debtor. (*R. v. Topping* (1825), M'Cle. & Y. 544.)

In Bankruptcy.

Under the old law it was settled that the bankruptcy statutes did not bind the Crown. (*R. v. Pixley* (1725), Bunb. 202; *Brassey v. Dawson* (1734), 2 Stra. 978; *Anon.* (1745), 1 Atk. 262; *E. p. Russell* (1812), 19 Ves. 163, 165; *E. p. Temple* (1814), 2 V. & B. 391; *Craufurd v. A.-G.* (1819), 7 Price, 1; *R. v. O'Donnell* (1844), 1 Jo. & Lat. 271; 6 Ir. Eq. R. 639; though it was doubted in the earlier case of *A.-G. v. Stannforth* (1721), Bunb. 97.)

It is, however, provided by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 150, that "save as herein provided the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts . . . shall bind the Crown." The latter class of

provisions referred to are to be found in sect. 40, as amended by the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), ss. 1, 2; the Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19), ss. 2, 3; and the Workmen's Compensation Act, 1906 (6 Edw. VII. c. 58), s. 5 (3). These sections provide for the payment in priority to all other debts of not more than one year's assessment of parochial and local rates and assessed taxes, and the wages of certain servants and workmen, and that, subject to the provisions of the Acts, all debts proved in the bankruptcy shall be paid *pari passu*. So far, therefore, as actual proof in the bankruptcy goes, the Crown would appear to be on the footing of an ordinary creditor, and in particular the limitation of priority in the case of assessed taxes to one year's assessment specially limits the right, which it previously had, to prove for taxes to any extent in priority to other creditors. But it must be observed that the provisions as to the relation back of the trustee's title (sect. 43) are not applied to the Crown. (See *E. p. Postmaster-General, In re Bonham* (1879), 10 Ch. D. 595; 48 L. J. Bk. 84.)

The provisions relating to "the remedies against the property of the debtor" appear to be sects. 9, 42, 45, and 55, but the general effect of sect. 150 on the rights of the Crown is by no means clear in every respect, and it is therefore necessary to set out the decisions prior to the Act of 1883 with regard to the Crown's priority, and these must be read subject to the provisions cited above.

In *A.-G. v. Capell* (1687), 2 Show. K. B. 480, it was held that an extent in aid was barred by a previous assignment of the debtor's goods under a commission of bankruptcy, but not by the issuing of the commission only. Compare *A.-G. v. Alston* (1678), 2 Mod. 247, and *R. aux. Braddock v. Watson* (1816), 3 Price, 6. By *R. v. Earl* (1718), Bunb. 33, where an extent and a commission of bankruptcy issued the same day, the extent had the preference; *secus*, if the extent was tested on a subsequent day. Lord Eldon, L. C., stated in *Wyldown's Case* (1807), 14 Ves. 80, 87, that he once got out of bed in the country in the middle of the night to seal a commission, following the previous example of Lord Loughborough, L. C., in order to anticipate the issue of an extent. These authorities seem to be still good law, since the Act of 1883 does not apply the provisions as to relation back to the Crown, and they do not, apart from statute, apply to the Crown; and, indeed, in a much more recent case, prior, however, to the Act of 1883, it was held that property was bound by an extent issued between the filing of the petition and the appointment of a trustee. (*E. p. Postmaster-General, In re Bonham* (1879), 10 Ch. D. 595; 48 L. J. Bk. 84.) The fact that the Crown can now prove in the bankruptcy, though

formerly, it may be, it could not (see Manning, Exch. Pr. (ed. 2) pp. 33, 48), makes no difference to this. Now, *semble*, a Crown debtor's property would be bound by an extent tested after the making of a receiving order under sect. 9, but not by an extent tested after the vesting of the debtor's property in a trustee under sect. 54, of the Bankruptcy Act, 1883.

Where an extent was issued against a bankrupt for a Crown debt on the same day as the adjudication in bankruptcy and the appointment of an official assignee, though at a later hour, the Crown's title was held to prevail. (*Edwards v. R.* (1854), 9 Ex. 628; 23 L. J. Ex. 165.) In *Tipper v. R.* (1830), 8 S. 785, counsel for the Crown obtained an adjournment of the adjudication to the next day, solely that an extent might be issued; but the Court, on this being pointed out to them, refused to interfere.

In *In re Bentinck*, [1897] 1 Ch. 673; 66 L. J. Ch. 359, a testator died insolvent after 1870, owing specialty and simple contract debts, including a simple contract debt for death duties to the Crown. The assets were more than sufficient for payment of the Crown debt after satisfying the specialty debts. It was held that, regard being had to the Administration of Estates Act, 1869 (32 & 33 Vict. c. 46), the assets ought first to be apportioned between the specialty and simple contract debts, and the Crown debt ought then to be taken out of the amount apportioned to the simple contract debts. Stirling, J., observed that in his opinion the Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 3 (p. 735), was not intended to take away the priority of the Crown.

In *In re Galvin*, [1897] 1 I. R. 520; [1898] W. N. 140, it was held that a Crown debt for legacy duty was entitled to priority over the general creditors of the bankrupt, and that such priority could be asserted by motion in the bankruptcy, and existed notwithstanding the vesting of the bankrupt's estate in his assignee; but the Court pointed out that the Irish Acts did not contain any provision equivalent to the English provision that all provable debts shall be paid *pari passu*, and expressed its opinion that that provision plainly extinguished the prerogative right of preference in respect of all debts not specifically excepted. (See above, p. 165; see also *In re "Nation" Newspaper, Ltd.* (1900), 35 I. L. T. R. 130.)

A similar case was *Commrs. of Taxation for New South Wales v. Palmer*, [1907] A. C. 179; 76 L. J. P. C. 41. The New South Wales Act, like the Irish Acts, contains no provision corresponding to sect. 150 of the Bankruptcy Act, 1883, and the Court, discussing the matter at large, decided again in favour of the general prerogative of priority possessed by the Crown where its claim was in competition

with the claim of a subject. See also *A.-G. for New South Wales v. Curator of Intestate Estates*, [1907] A. C. 519; 77 L. J. P. C. 14.

In *In re Dalton, E. p. Usher* (1809), 1 Ball & B. 197; 2 Moll. 442, it was held that a recognisance by an infant's guardian was not such a debt due to the Crown as that the person secured by it could have a preference in the bankruptcy over the other creditors of the obligor. (See above, p. 143.)

It was held in *In re Lord Churchill* (1888), 39 Ch. D. 174; 58 L. J. Ch. 136, that a surety to the Crown, who has paid the debt of his principal, is entitled to the Crown's priority in the administration of his principal's estate. Compare *Faichney v. Arnot* (1824), 3 S. 413. But in *Lords of the Treasury v. MacNair* (1809), 15 F. C. 183, a Crown debtor was held to have no preference over other creditors of a firm. As to the extent of the Crown's priority against the estate of a Treasurer of Trinidad, see *Wildes v. A.-G. of Trinidad* (1840), 3 Moo. P. C. 200.

It is specifically provided in the Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79), s. 148, that the Act shall not discharge any prisoner with respect to Crown debts, &c., unless the Treasury consent to such discharge.

In Companies Winding-Up.

The Crown is not bound by the Companies Acts, since it is not specially mentioned therein. Consequently the Crown can enforce its debt by distress against a company in spite of liquidation, and it follows that it ought to be paid in priority to other creditors. (*In re Henley & Co.* (1878), 9 Ch. D. 469; 48 L. J. Ch. 147.) This rule is not affected by the assimilation, by the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10, of the rules in companies winding-up to the rules in bankruptcy with respect to the assets of bankrupts. It may be that so much of the bankruptcy law as relates to the Crown's priority is imported into winding-up proceedings, but so much as relates to the Crown's remedies against the debtor's property is not, and therefore the Crown may still issue process and consequently can compel payment in priority. (*In re Oriental Bank Corporation, E. p. the Crown* (1884), 28 Ch. D. 643; 54 L. J. Ch. 327.)

In *In re West London Commercial Bank* (1888), 38 Ch. D. 364; 57 L. J. Ch. 925, the Postmaster-General, on behalf of the Crown, was held entitled to payment in priority over other creditors of the balance due in respect of Post Office moneys. (See also *In re Galvin*, [1897] 1 I. R. 520; [1898] W. N. 140.)

In an earlier case, *In re English Joint Stock Bank*, [1866] W. N. 199, the Court expressed the opinion that the Crown was not bound

by the Companies Act, 1862 (25 & 26 Vict. c. 89). It was sought to restrain sheriffs from levying on an extent after the presentation of a petition for winding-up, but no order was made. In *In re Regent United Service Stores*, [1878] W. N. 21; 38 L. T. 130, we find the remarkable decision that a distress for Queen's taxes was on a level with a distress for parish rates, and should be restrained. This is clearly not good law.

In view of the application of bankruptcy rules to winding-up as just stated, reference must be made to the bankruptcy cases cited above, pp. 165 *sqq.*

Exchange Bank of Canada v. R. (1886), 11 A. C. 157; 55 L. J. P. C. 5, discussed the priority of the Crown in a liquidation in Lower Canada; *Fox v. Government of Newfoundland*, [1898] A. C. 667; 67 L. J. P. C. 77, did the same in the case of Newfoundland; and *Secretary of State in Council of India v. Bombay Landing and Shipping Co., Ltd.* (1868), 5 Bom. H. C. O. C. J. 23, in the case of India.

Sir F. B. Palmer (*Company Precedents* (ed. 9), Part 2, p. 450) queries whether Crown debts have priority over fees due to the Board of Trade. There seems to be no reason why they should.

As to the right of the Crown to take the dividend belonging to a dissolved corporation as creditor in a bankruptcy, see *In re Higginson & Dean, E. p. A.-G.*, [1899] 1 Q. B. 325; 68 L. J. Q. B. 198; and below, p. 494.

As against Mortgagees and Others having Charges or Rights.

An equitable mortgage by deposit of title deeds by a public accountant in the hands of one who had an opportunity of knowing that the depositor was or might become a Crown debtor was held, in *Broughton v. Davis* (1814), 1 Price, 216, not to be available against an extent; but it is otherwise where the equitable mortgage has been made *bonâ fide* and for value; and the mortgagees are entitled to be paid the principal and interest due to them before the Crown satisfies itself out of the estate of its debtor (*Casberd v. Ward* (1819), 6 Price, 411; *Fector v. Phillpott* (1823), 12 Price, 197; and see *Hodge v. A.-G.* (1839), 3 Y. & C. 342; 8 L. J. Ex. Eq. 28). It might be otherwise if the legal estate were in the Crown (see *Whitworth v. Gauguin* (1846), 1 Ph. 728, 732; 15 L. J. Ch. 433). See further, below, p. 196.

In *Hartly v. O'Flaherty* (1833), Ll. & G. t. Plunk. 208, a debt due to the Crown, overriding the entire estate of the debtor, having been levied only out of one portion of it vested in a mortgagee, the mortgagee was held to be not entitled to contribution from purchasers of other portions of the estate of the debtor who derived title under a settlement for valuable consideration prior to such mortgage.

In *E. p. Stephens* (1834), 2 Mont. & Ayr, 31, an equitable mortgagee was held not to be entitled out of the proceeds of sale to the costs of a successful defence to an extent in aid.

Legacies charged on land by will were ordered to be paid, although the land had been extended. (*Poole v. A.-G.* (1708), Park. 272.)

Goods assigned *bonâ fide* by the defendant in trust for his creditors before the teste of an extent cannot be taken by the Crown. (*R. aux. Braddock v. Watson* (1816), 3 Price, 6; *Spears v. L. A.* (1839), 6 Cl. & F. 180.) As to the rights of the Crown to property assigned by deed to a third party by a Crown debtor to be applied in discharge of debts due from him, see *Foster v. Hargreaves* (1836), 1 Keen, 281.

It is said that goods pawned or pledged before the teste of an extent cannot be taken by the Crown, nor can goods demised or lent for a term certain be taken while the term continues, but that goods so pawned may be taken as against the pawnee on satisfaction of the pledge, or taken and sold subject to the pawnee's right. (West on Extents, p. 116; and see below, p. 196.) It is also stated by Manning, Exch. Pr. (ed. 2), p. 44, that the mere lien of a subject, though prior to the lien acquired by the Crown, is no impediment to the Crown's execution. The authorities cited by him do not appear to bear this out. In *R. v. Lee* (1819), 6 Price, 369, a factor to whom goods had been sent for sale, and who had accepted bills of exchange drawn on him by his principal to the amount of their value, was held to have a lien on the goods and the purchase-money available against the Crown. In *R. v. Humphery* (1825), M'Cle. & Y. 173, a wharfinger's general lien on the goods of his customer in his possession in respect of freight and wharfage, due before the teste of an extent against the customer, was held to prevail against the extent. *Quære*, whether his lien for warehouse room was on the same footing; but it was allowed from the teste of the extent till seizure. In *A.-G. v. Trueman* (1843), 11 M. & W. 694; 13 L. J. Ex. 70; and *A.-G. v. Walmsley* (1843), 12 M. & W. 179; 13 L. J. Ex. 66, however, a lien for money advanced on malt, which had been seized by the Crown, was held not to prevail against the Crown.

Part II.

Proceedings at Law on the Revenue Side of the King's Bench Division.



CHAPTER I.

LATIN INFORMATIONS.

General Observations.

INFORMATIONS, which are filed on the Revenue side of the King's Bench Division (formerly the Revenue side of the Court of Exchequer; see the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 32, 34, and the Order in Council of December 16th, 1880), may be divided into Latin informations and English informations, according as they are proceedings at law or in equity. The latter are dealt with in Part III. of this Book.

The term "Information" is derived from the fact that in this form of proceeding one of the Law Officers of the Crown, or of the King as Duke of Lancaster (in the Duchy Courts), or of the Duke of Cornwall, gives the Court to understand and be informed of the facts upon which reliance is placed. Where a debt of the Crown is of record, such "information" is not required, since the Court can take cognizance of the facts *aliunde*; and the strict procedure in such a case is not by information, though there appears to be no reason why the Crown should not proceed by information, if it so chooses. (See above, pp. 142, 143.)

Blackstone's statement with regard to informations (2 Comm. 261, 262) is as follows: "An *information* on behalf of the Crown, filed in the Exchequer by the King's Attorney-General, is a method of suit for recovering money or other chattels, or for obtaining satisfaction in damages for personal wrong committed in the lands or other possessions of the Crown. It differs from an information filed in the Court of King's Bench . . . in that *this* is instituted to redress a private wrong, by which the property of the Crown is affected; *that* is calculated to punish some public wrong or heinous misdemeanour in the

defendant. It is grounded on no writ under seal, but merely on the intimation of the King's officer, the Attorney-General, who 'gives the Court to understand and be informed of' the matter in question: upon which the party is put to answer, and trial is heard, as in suits between subject and subject. The most usual informations are those of *intrusion* and *debt*: *intrusion*, for any trespass committed on the lands of the Crown, as by entering thereon without title, holding over after a lease is determined, taking the profits, cutting down timber or the like; and *debt*, upon any contract for monies due to the King, or for any forfeiture due to the Crown upon the breach of a penal statute. This is most commonly used to recover forfeitures occasioned by transgressing those laws, which are enacted for the establishment and support of the Revenue: others, which regard mere matters of police and public convenience, being usually left to be enforced by common informers, in the *qui tam* informations or actions of which we have formerly spoken (2 Comm. 162). But after the Attorney-General has informed upon a breach of a penal law, no other information can be received (*A.-G. v. Anon.* (1661), Hard. 201) [and the King takes the whole forfeiture (2 Hawk. P. C. 368)].

"There is also an information *in rem*, when any goods are supposed to become the property of the Crown, and no person appears to claim them, or to dispute the title of the King. As anciently in the case of treasure-trove, wrecks, waifs and estrays, seized by the King's officer for his use."

Informations at law or Latin informations are divided by Manning (Exch. Pr. (ed. 2) p. 142) into informations *in personam* and informations *in rem*. Informations *in rem* are those in which the Crown claims an adjudication in its favour in respect of property in lands or goods. The simplest form of such an information is in the case where the Crown, by seizure or otherwise, is already in possession of the lands or goods, and merely claims a declaration of its title. The other form is where such personal property is in the possession or under the control of some person or corporation other than the Crown. In this case, the information for its recovery is known as an information of *devenerunt*.

Owing to changes in law and practice, informations *in rem* are of far less importance than they were in former times, and we are more concerned here with informations *in personam*. By such an information any claim or demand, for which an ordinary person or corporation might sue by action, may be pursued by or on behalf of the Crown.

In practice informations are always filed in the High Court, but there seems to be no reason why the Attorney-General should not lay his information in the County Court, if he chooses. In the case of

very small amounts, however, the fee of 2*l.* 13*s.* 2*d.* (including clerk's fee), which is paid to the Attorney-General for perusing and signing the information, except in Revenue cases, where a smaller fee is accepted by him, and the other costs in connection with this procedure, cause a considerable difficulty, and it might well be considered whether the Crown should not be authorised to proceed in a simpler manner for the recovery of amounts, say, within the County Court limit.

Informations of Debt.

This class of information, the most frequent class in practice, is used by the Crown for the recovery of any debt alleged to be due to it, whether by way of penalty or duty, or under a contract or otherwise. It is now, in particular, the normal way by which the Crown recovers damages or other sums to which it is entitled under a contract, though in earlier times it would appear (Manning, Exch. Pr. (ed. 2), p. 201) that this was not so where such sums were of record or could easily be made so. But see above, p. 143. It is, in fact, the King's action of debt. (*Cawthorne v. Campbell* (1790), 1 Anst. 205, n., 214; *A.-G. v. Freer* (1822), 11 Price, 183, 187.)

The statutory provisions as to the recovery of penalties and duties under the Acts relating to the Inland Revenue and the Customs are set forth above, pp. 60 *sqq.*, 68, and precedents of the pleadings are given below, pp. 261 *sqq.* An averment in an information that the Commissioners of Inland Revenue or Customs have ordered it to be exhibited is sufficient proof of the fact, by the Excise Management Act, 1827 (7 & 8 Geo. IV. c. 53), s. 71. This is not affected by sect. 24 of the Inland Revenue Regulation Act, 1890 (below, p. 741). (*Hargreaves v. Hilliam* (1894), 58 J. P. 364; *Dyer v. Tulley*, [1894] 2 Q. B. 794; 63 L. J. M. C. 272.)

As to informations for penalties under Acts other than those connected with the Revenue, a precedent will be found below, p. 264. Reference may also be made to *A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667; 54 L. J. Q. B. 205, an information for penalties under the Parliamentary Oaths Act, 1866 (29 & 30 Vict. c. 19); to *A.-G. v. Willett* (1896), 60 J. P. 643, and *A.-G. v. Ball* (1903), not reported, informations against justices for penalties under the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 60; and to *A.-G. v. Yorkshire (Woollen District) Electric Tramways, Ltd.*, [1907] 2 K. B. 991; 77 L. J. K. B. 33, for penalties for keeping light railway cars without a proper licence. For a recent *qui tam* action, see *Goldsmiths' Co. v. Wyatt*, [1907] 1 K. B. 95; 76 L. J. K. B. 166.

Penalties under certain Acts can only be recovered at the suit of

the Attorney-General or Lord Advocate. Under the Gaming Act, 1802 (42 Geo. III. c. 119), s. 2, persons keeping any office or place for any game or lottery not authorised by law, &c. are liable to forfeit 500*l.*, recoverable by information by the Attorney-General, to the use of His Majesty. (See *R. v. Tuddenham* (1841), 9 Dowl. 937.) 46 Geo. III. c. 148, s. 59, therein referred to, has not been repealed so far as it does not relate to penalties inflicted by the Act. (See Statute Law Revision Act, 1872 (35 & 36 Vict. c. 63).) By 2 & 3 Vict. c. 12, ss. 2, 4, preserved by the Newspapers, Printers and Reading Rooms Repeal Act, 1869 (32 & 33 Vict. c. 24), s. 1, and Sched. II., penalties upon printers for not printing their name and address on every paper or book, and on persons publishing the same, can only be recovered by proceedings in the name of the Attorney- or Solicitor-General in England, or the Lord Advocate in Scotland. By 9 & 10 Vict. c. 33, s. 1, also preserved by the last-named Act, penalties incurred under the Unlawful Societies Act, 1799 (39 Geo. III. c. 79), s. 29, by printers who do not keep a copy of every paper, which they print for gain, for six months, and write upon it the name and address of their employer, and produce it to a justice when required, are recoverable only as above mentioned, and (by sect. 36) are applicable half to the informer and half to His Majesty. (See *R. v. Johnson* (1845), 8 Q. B. 102; 15 L. J. M. C. 7.) Penalties for advertising foreign or illegal lotteries under the Lotteries Act, 1836 (6 & 7 Will. IV. c. 66), s. 1, are, by the Lotteries Act, 1845 (8 & 9 Vict. c. 74), ss. 3, 4, to be applied to the use of the Crown, and may only be recovered by the Attorney- or Solicitor-General in England or Ireland, or the Lord Advocate or Solicitor-General in Scotland, or the respective Solicitors of Inland Revenue, or by a person authorised in writing by the Inland Revenue Commissioners, or in the name of an officer of Inland Revenue, by action or information in the High Court or Court of Session.

Sometimes penalties can only be recovered with the consent of the Attorney-General, as under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 253, the Public Health (Officers) Act, 1884 (47 & 48 Vict. c. 74), s. 2, and the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), s. 4. The Attorney-General has complete discretion to grant or refuse his consent. (See *E. p. Hurter* (1883), 47 J. P. 724, s. n. *E. p. Hubert & Co.*, 15 Cox, C. C. 166; see also *Fletcher v. Hudson* (1880), 5 Ex. D. 287; 49 L. J. Ex. 793; *Boyce v. Higgins* (1853), 14 C. B. 1; 23 L. J. C. P. 5.)

Penal interest chargeable against a trustee in bankruptcy under sect. 74 (6) of the Bankruptcy Act, 1883, is payable to the bankrupt's estate and not to the Treasury, and must be recovered by motion in

the bankruptcy or by action, and not by information or other process for the recovery of penalties by the Crown. (*In re Sims, E. p. Board of Trade*, [1907] 2 K. B. 36; 76 L. J. K. B. 849.)

For an ancient form of an information on a penal statute see Clift, Ent. 394.

It is to be observed that, where a penalty is created by statute, and nothing is said as to who may recover it, and it is not created for the benefit of a party aggrieved, and the offence is not against an individual, it belongs to the Crown, and the Crown alone can maintain a suit for it. (*Bradlaugh v. Clarke* (1883), 8 A. C. 354; 52 L. J. Q. B. 505.)

Informations for penalties are to be regarded rather as civil than as criminal proceedings. (*A.-G. v. Freer* (1822), 11 Price, 183; *A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667; 54 L. J. Q. B. 205.)

Where a statute provides a multiple penalty or multiple damages, the amount to be entered up must be that multiple of the penalty or damages found by the jury. (*A.-G. v. Hatton* (1824), 13 Price, 476; *Buckle v. Beves* (1825), 4 B. & C. 154.)

As to the venue of informations on penal statutes, see below, p. 582.

As to joinder of defendants and of offences in informations for penalties, see *Ruck v. A.-G.* (1858), 3 H. & N. 208; 27 L. J. Ex. 313; *A.-G. v. Freer* (1822), 11 Price, 183; *A.-G. v. Henley* (1858), 8 Ir. C. L. R. 267.

It may be useful here to give some reported specimens of informations of debt for sums other than penalties or duties: *A.-G. v. Case* (1816), 3 Price, 302, for damages for collision with King's ships; *A.-G. v. Great Southern and Western Rail. Co.* (1863), 14 Ir. C. L. R. 447, for the recovery of sums overcharged for the conveyance of public baggage; *A.-G. v. Moore* (1878), 3 Ex. D. 276; 47 L. J. M. C. 103, to recover fines received on behalf of the Crown by a clerk to justices; see also *A.-G. v. Jackson* (1846), 5 Hare, 355, as to the recovery by information of compensation for the use of certain mines and quarries, of which the Crown was seised. Precedents are printed below, pp. 265 *sqq.*, of pleadings on proceedings by information in respect of damages for breach of contract, and damages for breach of an agreement of service, and for the recovery of rent, &c. *A.-G. v. Sutcliffe*, [1907] 2 K. B. 997; 76 L. J. K. B. 991, was an information to recover sums paid by the Secretary of State under sect. 4 of the Aliens Act, 1905 (5 Edw. VII. c. 13). It was held in *A.-G. v. Hughes* (1842), 11 L. J. Ch. 329, after enquiry had been made in the Exchequer, that by the practice of the Exchequer, the Attorney-General had no privilege of suing, at his discretion, one or more persons jointly or jointly and severally indebted to the Crown. In *Gill v. A.-G.* (1663), Hard. 314, it had

been decided that Commissioners of Excise, who were joint accountants to the Crown, were each liable for the whole debt, even though the individual sued had not himself received the money, but, as was pointed out in *R. v. Inhabitants of Artillery Ground* (1754), Park. 167, 171, the accountants there had become such by their own voluntary act, and each had engaged for the conduct of the other.

It is specially provided by sect. 222 of the Customs Consolidation Act, 1876 (p. 717), that, in the case of penalties jointly and severally incurred under the Customs Acts by several persons, such persons may be proceeded against jointly by one information or by several informations, and, if by joint information, the penalties are recoverable against each. (See the form of judgment in Sched. B. to the Rules of 1860 (p. 793).)

It has been said that, if the King's debtor dies, the King may pursue his remedy against the executor of the deceased at any time (*A.-G. v. White* (1733), 2 Com. 433), and this appears still to be the case.

Informations in Rem.

Informations of this type, as has already been observed, fall into two classes according as the article claimed by the Crown is already in the Crown's possession or not. In the latter case the information is known as an information of *devenerunt*.

The statutory provisions relating to the most usual form of informations *in rem*, those which concern the forfeiture of articles seized under the Customs and Revenue Acts, will be found below, pp. 716, 740; and see above, pp. 60, 68. As to the sufficiency of an averment in the information that it has been authorised by the Commissioners of Inland Revenue or Customs, see above, p. 172.

For informations as to the forfeiture of ships, see *Laragoity v. A.-G.* (1816), 2 Price, 166, 172; *A.-G. v. Norstedt* (1816), 3 Price, 97; *A.-G. v. Schiers* (1835), 2 C. M. & R. 286; 4 L. J. Ex. 324; for forfeiture of goods, see *A.-G. v. Cullen* (1820), 8 Price, 668; *A.-G. v. Vondiere* (1834), 1 C. M. & R. 570; 4 L. J. Ex. 41. There is no need to aver that the cause of forfeiture arose before seizure. (*A.-G. v. Clerc* (1844), 12 M. & W. 640; 14 L. J. Ex. 82.) The Latin forms of pleading in informations of the former class will be found in *R. v. Verdjuice* (1668), Trem. P. C. 672, and *R. v. The Griffin* (1669), Trem. P. C. 677, and a very great number of Latin pleadings relating to both classes are printed in the *Modern Practice of the Court of Exchequer*, published in 1731. For forms of judgment, see Sched. B. to the Rules of 1860, p. 790.

An information of *devenerunt*, as already observed, is the name

applied to an information *in rem*, where it seeks the recovery of personal property belonging to the Crown, either by forfeiture or otherwise, which has found its way into the hands of, or is under the control of, some person or corporation. The name is derived from the Latin form of pleading on such an information. A form will be found in *R. v. Maunsell* (1594), Co. Ent. 390, an information for the recovery of certain tithes of grain. It alleged that the Queen "*extra manum et possessionem suam casualiter amisit*" the tithes of grain in question, and that they "*ad manum et possessionem*" of the defendants "*per inventionem devenerunt*," and that they converted them to their own use to the Queen's damage. The defendants pleaded not guilty. There is a similar pleading in *R. v. Waller* (1667), Trem. P. C. 678. The Crown claimed the goods or their value and the defendant's plea here was "*non devenerunt*," as in *R. v. Manning* (1739), 2 Com. 616.

A.-G. v. Burges (1726), Bunb. 223, was an information in the nature of a *devenerunt* for the treble value of goods that came into the hands of the defendant, he knowing they had not paid the duties. It was held that, if several parties were concerned, the Crown might go against any of them for the whole penalty, the matter being in the nature of a tort. *R. v. Jordan* (1587), 2 Leon. 34, was an information to recover certain munitions of war which had come into the hands of the executors of two late officers of the Ordnance, and had been converted by them. Here the defendants pleaded not guilty, to which the Attorney-General demurred, on the ground that they had only answered to the conversion, and not to the allegation that the goods had come into their hands, a fact which, in itself, would make them liable to account. It was held that they ought to answer to the charge. Thus it would appear that the pleading in Co. Ent. 390, referred to above, was also incorrect in form. The proper pleading is "*not guilty*" to the conversion and "*non devenerunt*" to the possession. Another instance is *Nat qui tam v. Bartlett* (1710), Park. 278, for a parcel of wine, where it was held that the quantity and kind as well as the value must be specified; *secus*, in an information of seizure; so *Kennett qui tam v. Lloyd* (1719), Bunb. 58. It was stated in the case in Parker that the information of *devenerunt* is in nature of trover or trespass. This statement does not appear to be strictly correct. The King is legally incapable of being put out of possession (see *Friend v. Duke of Richmond* (1667), Hard. 460; *Doe d. Watt v. Morris* (1835), 2 Bing. (N. C.) 189, 196; 4 L. J. C. P. 285), and therefore it ought not in strictness to be alleged that the person charged found and converted the goods; the information is rather a proceeding in the nature of an action of detinue. It will have been seen, however, from the examples already given, to be the constant practice

to allege trover and conversion, and that such an information lies is the opinion expressed in the notes to *R. v. Sutton* (1670), 1 Wms. Saund. 269 d, 271 b. So in *Wilkinson v. Rocklas* (1671), 1 Mod. 90, it is said: "It is the course of the Exchequer in case of an outlawry to prefer an information in the nature of trover and conversion against him that hath the goods of the party outlawed."

It is not necessary that the goods should have come actually into the defendant's hands, if they have come into his power, or into the custody of any agent of his, or of any person by his direction. (*A.-G. v. Burges* (1726), Bunb. 223.)

Of a similar nature to an information of *devenerunt* are the proceedings (which are now usually taken in Chancery) for the recovery of treasure trove. A form of pleadings in such proceedings will be found below, p. 544, and reference may be made to *A.-G. v. Moore*, [1893] 1 Ch. 676; 62 L. J. Ch. 607, and *A.-G. v. Trustees of the British Museum*, [1903] 2 Ch. 598; 72 L. J. Ch. 743. For an ancient information for treasure trove, see *Liber Intrationum* (Vet. Intrat.) 225 a. Of the nature also of informations of *devenerunt* are informations to obtain possession of choses in action or other property belonging to an alien enemy. Such a case was *A.-G. v. Weedon* (1699), Park. 267, where it was held that the conclusion of peace before the King's title was found discharged the cause of forfeiture. An information of this nature, which was laid in a recent case, is printed below, p. 270. As to the right of the Crown to enemies' goods coming into this country, see *Land v. Lord North* (1785), 4 Doug. 266; *The Johanna Emilie* (1854), 1 Spinks, 12, 14.

It is said to have been laid down by Hale, quoted in *A.-G. v. Lade* (1745), Park. 57, 69, that, the King may inform upon a *devenerunt* in what Court he pleases, but that an information upon a seizure to condemn goods by proclamation must be in the Exchequer, in order that upon all such seizures every person concerned may have and know a certain place to resort into for his remedy in this kind. This dictum requires modification now that there is statutory provision for proceedings for condemnation elsewhere than in the High Court. (See above, pp. 60, 68.)

Informations of Intrusion.

Their Nature.

An information of intrusion is a proceeding by the Attorney-General on behalf of the King in respect of a trespass committed against his lands and possessions, or any injury done to the real property of the Crown (see Blackstone's definition cited above, p. 171), and judgment may be given for the recovery of the lands,

compensation, and any ancillary remedy to protect the King's rights. It was said by Manwood, C.B., at a conference of Barons reported in Sav. 48, that such an information was in the nature of a personal action of trespass *quare clausum fregit*, and that consequently it might be in general terms, alleging that the King was seised of certain lands, without describing the particular species or quantity. See also the observations in the *Case of Mines* (1567), Plowd. 310, at p. 337, and the form of information in that case. But see now Exchequer Rule 22, below, pp. 179, 184.

In *A.-G. v. Sherrington* (1582), Sav. 40, pl. 90, an information was brought against the executrix of a person who had cut certain oaks and other wood on the Queen's land, and Manwood, C.B., held that, in such a case, the ordinary rule did not apply, and that the executrix could be sued for the testator's tort. *Sed quare*.

A list of old informations for intrusion will be found in Manning's Exch. Pr. (ed. 2), p. 197—informations for intruding into lands which have come to the King by attainder (*Anon.* (1569); Rast. Ent. 412 a; *A.-G. v. Heydon* (1578), Co. Ent. 372 a; *Walsingham's Case* (1569), Plowd. 547); into a messuage in London, whereof the King was seised *jure coronæ* (*Porter's Case* (1592), 1 Rep. 16 b); into a wood (*Case of Alton Woods* (1600), 1 Rep. 26 b, the pleadings in which in their original shape are given in Co. Ent. 381 a; *A.-G. v. Imber* (1572), Co. Ent. 378 b); into lands devised to the King (*A.-G. v. Skrimshire* (1552), Dy. 73 a); into manors in the hand of the King as guardian and by inquisition respectively (*Liber Intrationum* (Vet. Intrat.), 224 b). Other old instances will be found in Co. Ent. 384 b, 387 a. Forms of judgments are given in Co. Ent. 378 b, 380 a, 383 b.

To these may be added *A.-G. v. Butler* (1581), Sav. 4, pl. 10, for intrusion on tithes; *A.-G. v. Ayleworth* (1582), Sav. 28, pl. 67, for intrusion into land and woods; *Perrot's Case* (1594), Moo. 368, for intrusion into a manor belonging to the Queen by attainder; *A.-G. v. Gauntlett* (1829), 3 Y. & J. 93, for cutting and carrying away peat and turves from a royal forest; *A.-G. v. Donaldson* (1842), 10 M. & W. 117; 11 L. J. Ex. 338, for making entry on a royal palace in order to levy a distress for sewers rates, where it was held that the right of the defendants to plead the general issue under 23 Hen. VIII. c. 5, s. 11, did not extend to an information of intrusion, see *A.-G. v. Allgood* (1743), Park. 1. *A.-G. v. Dakin* (1870), L. R. 4 H. L. 338; 39 L. J. Ex. 113, was for an intrusion on Hampton Court Palace for the purpose of levying an execution. *A.-G. v. Jones* (1863), 2 H. & C. 347; 33 L. J. Ex. 249 (see also *A.-G. v. Portsmouth Corporation* (1877), 25 W. R. 559), was for intrusion on certain seashore alleged to belong to the Crown.

With these cases may be coupled *A.-G. for the Isle of Man v. Mylchreest* (1879), 4 A. C. 294; 48 L. J. P. C. 36, and *A.-G. v. Welsh Granite Co.* (1887), 35 W. R. 617, where the Crown asked for declarations that it was entitled to certain minerals.

Of a similar character to an information of intrusion was *A.-G. v. Edison Telephone Co. of London, Ltd.* (1880), 6 Q. B. D. 244; 50 L. J. Q. B. 145, arising out of the alleged infringement by the defendants of the Crown's telegraph monopoly.

In *A.-G. v. Kirk, Kirk v. R.* (1872), L. R. 14 Eq. 558, an information by the Attorney-General in the nature of an information of intrusion, it was suggested that where the Attorney-General was praying relief in respect of works or lands belonging to the Secretary of State for War, the Secretary of State should be joined as a party. *Sed quere.*

It would seem from *A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167, that the Attorney-General to the Prince of Wales may file an information of intrusion in respect of lands parcel of the Duchy of Cornwall.

The proper form of information would seem to be, after the introductory paragraph as set out in the precedent below, p. 269, "That certain land [it is proper to describe it fully in view of Exchequer Rule 22, p. 757, in spite of the statement of Manwood, C.B., already referred to], on the day of , and long before and continually thence hitherto, was and stood and of right still ought to stand in the hands and possession of the King, in right of his Crown of England. Nevertheless the defendant, contriving the disinherison of His Majesty, with force and arms, heretofore, to wit on the days and in the year aforesaid, and on divers other days and times between that day and the commencement of this suit, in and upon the possession of His Majesty of and in the premises entered and intruded and made entry [and with cattle depastured, &c.], and the issues and profits thereof coming perceived and had and as yet perceives and has to his own use [and dug up and subverted and spoiled the earth and soil thereof, &c.; and has cut down, &c.], the same trespass and intrusion thence hitherto as yet continuing, in contempt of His Majesty and to his great loss and damage. Wherefore the said Attorney-General of our said Lord the King, who for our said Lord the King in this behalf prosecuteth, prays the consideration of the Court here in the premises, and that, &c." See also the form printed below, p. 269.

It is not necessary, apparently, to proceed against all the persons in actual possession of the land, so long as their interests are properly represented, but see Rules 22—27, below, p. 757. Thus, in *A.-G. v.*

Walsh (1832), *Hayes*, 550, a number of cottier tenants of part of the land in question were struck out as defendants, on the ground that the proceeding was directly against the land and that their presence was unnecessary. See, however, *Friend v. Duke of Richmond* (1667), *Hard*. 460.

As to the position of an intruder on Crown land with reference to proceedings by him against a wrong-doer in respect of such land, see *Harper v. Charlesworth* (1825), 4 B. & C. 574; 4 L. J. (O. S.) K. B. 22.

The Pleadings and the Effect of 21 Jac. I. c. 14.

The Act 21 Jac. I. c. 14 (Irish Act, 15 Car. I. c. 1), is "An Act to admit the subject to plead the general issue in informations of intrusion brought on behalf of the King's Majesty and retain his possession till trial," and is as follows: "Where the King, out of his prerogative royal, may enforce the subject in informations of intrusion brought against him to a special pleading of his title, the King's Most Excellent Majesty, out of his gracious disposition towards his loving subjects, and at their humble suit, being willing to remit a part of his ancient and regal power, is well pleased that it be enacted; (2) and be it enacted. . . . That whensoever the King his heirs or successors, and such from or under whom the King claimeth, and all others claiming under the same title under which the King claimeth, hath been or shall be out of possession by the space of twenty years, or hath not or shall not have taken the profits of any lands, tenements or hereditaments, within the space of twenty years before any information of intrusion brought or to be brought to recover the same; that in every such case the defendant or defendants may plead the general issue, if he or they so think fit, and shall not be pressed to plead specially; (3) and that in such cases the defendant or defendants shall retain the possession he or they had at the time of such information exhibited, until the title be tried, found, or adjudged for the King.

"II. And be it further enacted, that where an information of intrusion may fitly and aptly be brought on the King's behalf, that no *scire facias* shall be brought, whereunto the subject shall be forced to a special pleading, and be deprived of the grace intended by this Act."

This Act was passed to abolish the common law prerogative of the Crown, whereby the defendant might be put to show his title specially, the ground alleged being that the King's title appeared of record, and it was unfair to the Crown that the defendant should not show his title also (4 Co. Inst. 116); the same view was taken in *A.-G. v. Hudson* (1565), Dy. 238 b, though it was held that the Attorney-General took the point too late. The cases cited by Manning, *Exch. Pr.* (ed. 2) 198, viz., *A.-G. v. Butler* (1581), Sav. 4, pl. 10, and *A.-G. v.*

Ware (1584), Sav. 66, pl. 138, do not seem to be contrary to this doctrine. If the defendant merely pleaded not guilty, or *non intrusit*, he was immediately put out of possession, inasmuch as the King's title appeared of record, whereas his did not. "It is the prerogative of the Crown not to interplead with the subject before it takes possession" (*Burgess v. Wheate* (1759), 1 Eden, 177, 188). The statute remedies this, but its operation is confined to cases where the Crown has been out of possession of, or has not received the profits of, the lands in question for twenty years or upwards. And the defendant must remember that he pleads the general issue, without showing title, at his peril. If the Crown has been in fact in possession within twenty years, it may apply to the Court to strike out the plea (*A.-G. v. D'Arcy* (1830), Hayes, 85); or, if the Crown establishes at the trial that it has been in possession within twenty years, there must be a verdict for the Crown, and the defendant cannot then set up his title (*A.-G. v. Ward* (1832), Hayes, 555). But the fact that the information contains an averment that the Crown has been in possession within twenty years does not preclude the defendant from pleading the general issue, if he so chooses (*A.-G. v. Mitchell* (1830), Hayes, 551). In *A.-G. v. Lord Langford* (1838), 2 Jones, 619, the defendant was allowed to withdraw his plea of the general issue and to plead specially on payment of all costs incurred by the Crown in consequence of his plea of the general issue.

In the most recent case, *Emmerson v. Maddison*, [1906] A. C. 569; 75 L. J. P. C. 109, it was held that the natural construction of the Act was "that it is an Act regulating procedure merely, and that its effect is to put a person against whom the Sovereign may file an information of intrusion on the same footing as a defendant in an ordinary action of ejectment, if the Crown has been out of occupation for twenty years, and to allow him, like a defendant in an ordinary ejectment, to retain such possession as he had at the date of the filing of the information of intrusion until the title of the Crown has been tried, and found or adjudged for the Sovereign." Consequently it was held that the statute had no substantive effect where no such information had been filed, that there was nothing in it to prevent the Crown or its grantee from making a peaceable entry and then holding possession by virtue of title, and that several decisions of the Colonial Courts had been wrong, wherein they had held that, by reason of the statute, the Crown, if it had been out of possession for twenty years, could not make a grant until it had first established its title by an information of intrusion. Of course, if the Crown could not obtain possession by peaceable entry (and it very seldom could, except in an unusual state of facts, as in *Emmerson v. Maddison*), then

it would be obliged to bring an information of intrusion, as was said in *Doe d. Watt v. Morris* (1835), 2 Bing. (N. C.) 189; 4 L. J. C. P. 285; but there is no obligation on it to do so, if a peaceable entry is possible. It is pointed out in this last case that, though in law the King cannot be put out of possession (see above, p. 176), the statute assumes that there may be adverse possession against him. It was similarly said by Lord Cottenham, L.C., in *A.-G. v. London Corporation* (1850), 2 Mac. & G. 247, 258, that "the object of the statute was to put the party who was contesting with the Crown in the same situation as a party contesting with any other plaintiff; but here in equity the Crown and the subject always were on the same footing, and they are on the same footing now: there was no evil therefore to be remedied. At law, however, there was, arising from technical reasoning, a great injury accruing to a defendant in litigation with the Crown. The Crown's title was taken as proved, unless a contrary title was set out and pleaded." In *A.-G. v. Parsons* (1836), 2 M. & W. 23; 5 L. J. Ex. 243, it was said that the only result of the statute is that "the onus is thrown on the Crown to prove its title in the first instance. The defendant shall not be bound to plead his title specially where he has had twenty years' possession without disturbance, and in that case the Crown stands in the situation of a subject."

Apart from the operation of the statute, it is said to be sufficient for the defendant to show a mere legal title to possession only; and that it will be enough if he shows a right to possession concurrently with the King. (Manning, Exch. Pr. (ed. 2), 199.) If he does not plead a sufficient legal title, the Attorney-General ought to demur, since, if issue is taken on the title pleaded, and it is found against the Crown, the Crown cannot then rely upon the defect in the pleading. (*A.-G. v. Hudson* (1565), Dy. 238 b; and see *A.-G. v. Hallett* (1847), 1 Ex. 211; 16 L. J. Ex. 262.)

For early specimens of pleading, see those already referred to above, pp. 178, 179; *A.-G. v. May* (1582), Sav. 34, 37; and *A.-G. v. Berkley* (1584), Sav. 61, 63. For copious further notes as to pleading to informations of intrusion, see Com. Dig. Praerog. D. 74; Bacon, Dig. Prerog. E. 7; the notes to *Porter's Case* (1592), 1 Rep. 16 b; and Manning, Exch. Pr. (ed. 2), p. 199. In particular, it would seem that a defendant to an information of intrusion (or any other information) cannot in strictness plead double (*A.-G. v. Allgood* (1743), Park. 1; *A.-G. v. Donaldson* (1842), 10 M. & W. 117, 124; 11 L. J. Ex. 338), except by consent of the Attorney-General (*A.-G. v. Pack* (1661), Hard. 189); and, if he shows title, he must show title in himself (*A.-G. v. Hallett* (1847), 1 Ex. 211; 16 L. J. Ex. 262).

It was held in *R. v. Talbot* (1634), Cro. Car. 311, that the statutes of jeofails did not extend to informations of intrusion; but this was apparently cured by 4 & 5 Ann. c. 3 (4 Ann. c. 16, Ruff.), s. 24.

See now, however, generally, Rules 33, 38, below, p. 759; and the article on pleading in Book VI. of this work, p. 563.

The Judgment.

The proper judgment for the Crown was held by the Chief Baron and the Queen's Remembrancer, as recorded in Sav. 49, to be, where the information was merely for intruding and taking profits, "quod convineatur" without any judgment for damages. But where the information was for cutting trees or taking other valuable things, the judgment should be "quod reddat dampnum, &c." In *Friend v. Duke of Richmond* (1667), Hard. 460, it was said by Hale, C.B., that "the judgment in intrusion is not in the nature of a seisin or possession, but only 'quod pars committatur et capiatur pro fine.' And upon that an injunction issues for the possession against the party himself and all claiming under him. And though a petition of right lies against the King in this case, yet when the King has granted the land over, an entry may be made upon his patentee. . . . Nor does an information of intrusion suppose the King out of possession, for that would be contrary to the purport of the writ, which supposeth that the party intruded upon the King's possession."

The judgment may be for an injunction, or an *amoveas manus* (see *A.-G. v. Kidsford* (1582), Sav. 35, pl. 83), or for any other remedy which the Court thinks fit to grant to the Crown. For old forms, see *Porter's Case* (1592), 1 Rep. 16 b; *Case of Alton Woods* (1600), 1 Rep. 26 b. The forms now current are printed below, pp. 785, 790. The procedure for removal of intruders, and for the recovery of profits and damages is now separated; see below.

By the Queen's Remembrancer Act, 1859, s. 25 (p. 680), when a right of re-entry upon hereditaments has accrued to the Crown, it may exercise it without any inquisition or office, or any actual re-entry.

The Present Practice.

This is governed by the Exchequer Rules of 1860, which are printed below, p. 753. By Rule 21 (p. 757), it is recited that in order to assimilate the procedure to that in ejectment and trespass, so far as is consistent with the prerogative and 21 Jac. I. c. 14, the procedure for removing intruders is to be separate and distinct from that to recover profits or damages for intrusion.

Removal of Intruders.—The writ of subpœna is to be directed to the intruders by name, and to all persons entitled to defend the possession of the property claimed, and the property intruded upon is to be described in the writ with reasonable certainty (Rule 22, p. 757). A form of writ is given in Sched. A. to the Rules, No. 2 (p. 775). Rules 23—25 (p. 757), provide for service and appearance within 14 days. By Rules 26, 27, a person not named in the writ may appear and defend by leave of the Court on showing by affidavit that he is taking the profits either by himself or his tenant, &c.; but if such person appears as landlord, taking the profits only by his tenant, he is to state in his appearance that he appears as landlord. By Rule 30, he is to enter an appearance, and plead as if he had been a defendant in the writ; and Rule 31 gives the Court power to strike out or limit such appearances and defences in a proper case.

By Rule 28 any person appearing may limit his defence to a part only of the property on giving notice to that effect within four days of appearance.

Rule 29 provides for judgment for want of appearance. It would seem that the Court will enter an interlocutory judgment against one or more defendants for default of appearance, but execution thereon is stayed till the final judgment in the suit has been given. See the form of such a judgment below, p. 785. By Rule 32, where no appearance is entered within the time appointed, or if an appearance be entered but the defence be limited to part only, the Crown may proceed with respect to the undefended part of the claim, and may sign judgment and issue execution for the removal of the defendant from the land, or the part thereof to which the defence does not apply. By Rule 34, if the defendant does not appear at the trial, verdict and judgment shall be entered for the Crown with costs, without the production of any evidence.

The fact of intrusion by the defendant is not to be at issue, and, in cases in which the defendant may plead the general issue under 21 Jac. I. c. 14, a plea denying the right of actual possession of the land and premises claimed to be in the Crown shall (except as to putting in issue the fact of the intrusion) have the like force and effect as a plea of the general issue would formerly have had. (Rule 33.)

Judgment for the Crown is to be a judgment of *amoveas manus* and *capiatur pro fine*, if a fine is sought to be recovered, but where judgment is given by default, either for non-appearance or for want of pleading, no costs are to be allowed. (Rules 35, 36.) On such judgment there may, by Rule 93 (p. 767), be either one writ or separate writs of execution for each removal, and for the costs, at the

election of the Attorney-General, who must endorse the writ. The form of such a writ may be that given in Sched. A., No. 10, p. 781.

Recovery of Profits or Damages.—The writ of subpœna is to be directed to the intruders by name (Rule 37, p. 759), and may be in the form given in Sched. A., No. 3 (p. 776). By Rule 38, the defendant may plead the general issue of *non intrusit* or not guilty, subject to the provisions of 21 Jac. I. c. 14, and the judgment by default will be interlocutory, subject to the provisions of Rule 92 (p. 767), which deals with the inquiry as to damages. The final judgment for the Crown will be that the Crown do recover damages and costs, with a *capiatur pro fine*, if necessary

CHAPTER II.

OTHER PROCEEDINGS WITH RESPECT TO DUTIES.

Summary Proceedings for the Recovery of Death Duties.

PROVISION is made in this behalf by sects. 54—64 of the Crown Suits, &c. Act, 1865, which are printed below, p. 702. These provisions are applied to estate duty by sect. 8 of the Finance Act, 1894 (57 & 58 Vict. c. 30), and to the property tax on corporate and unincorporate bodies by the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 19.

If any person accountable for or chargeable with duty, required by the Inland Revenue Commissioners to deliver an account, makes default in doing so, the Commissioners may sue out a writ of summons on the Revenue side of the King's Bench Division, commanding him to deliver an account and to pay the duty and costs, or show cause to the contrary. (Sect. 55.)

Similar proceedings are provided for where an assessment of duty has been made and the duty has not been paid, and there has been no appeal. (Sect. 56.)

In like manner, the Commissioners may claim an account and payment of duty, where a person has taken possession of and administered any part of the estate of a deceased person without obtaining probate or letters of administration. (Sect. 57.)

Forms of writs are given in Sched. IV. to the Act (p. 707).

The remaining sections deal with special cases (see also the Queen's Remembrancer Act, 1859, s. 15), and appeals, which are now governed by R. S. C. Ords. XXXIV. and LVIII. respectively, applied by Ord. LXVIII. r. 2, subject to the special provisions of those sections.

It is provided by Rule 127 of the Rules of 1860 (below, p. 772), that a full *præcipe* of the names of all the parties is sufficient without leaving a full copy of the writ, and that such writ shall be in force six calendar months, but may be renewed by re-sealing as a subpœna *ad respondendum*. Sched. A. to the Rules, No. 12, as amended by the Rules of 1861 (below, p. 782), contains a form of writ of summons similar to those in Sched. IV. to the Act, already referred to.

As to applications to attach executors for non-delivery of accounts, see *In re Higgs* (1889), 5 T. L. R. 125, where the practice is explained.

Appeals with respect to Estate Duty, and under the Licensing Act, 1904.

By sect. 10 of the Finance Act, 1894 (57 & 58 Vict. c. 30) (set out below, p. 744), any person aggrieved may appeal to the High Court in manner directed by Rules of Court. Appeals from such appeal are to be allowed only with the leave of the High Court or the Court of Appeal. The costs are to be in the discretion of the Court, and the Court may order the Inland Revenue Commissioners to pay interest at 3 per cent. on duty over-paid.

Where the value of the property as alleged by the Commissioners does not exceed 10,000*l.*, the appeal may be to the County Court.

Rules were made under this section in 1895, and are set out below, p. 801. A specific statement of the grounds of appeal is to be delivered to the Commissioners within one month of their claim. If the Commissioners maintain their decision, the appellant may, within one month, proceed with his appeal by way of petition to the High Court, to be filed in the King's Remembrancer's Department and served upon the Commissioners. The appellant may only rely in his petition and at the hearing on the grounds of appeal contained in his original statement. The matter is then to be deemed at issue, and within seven days the appellant, or in his default the Commissioners, may set down the petition for hearing on the Revenue side of the King's Bench Division. The Court or a judge may order its transfer to the Chancery Division. The remaining Rules provide for the amendment and striking out of the petition, and as to discovery and evidence. Applications for leave to appeal without payment or on part payment of the duty, under sect. 10 (4) of the Act, are to be by summons in Chambers.

Fee on filing 2*s.* 6*d.*, fee on setting down for trial 1*l.*

The County Court Rules on the matter are printed below, p. 802.

Under the Licensing Act, 1904 (4 Edw. VII. c. 23), s. 2, appeals from the Inland Revenue Commissioners as to the amount of compensation to be paid under the Act are to be conducted in the same manner as appeals as to the valuation of an estate for the purpose of estate duty, and the petition is filed and set down for hearing in the King's Remembrancer's Department in the same way. See *E. p. Ashby's Cobham Brewery Co.*, [1906] 2 K. B. 754; 75 L. J. K. B. 983.

Appeals with respect to Land Tax.

The Land Tax Redemption Act, 1838 (1 & 2 Vict. c. 58), by sect. 2, gives power to the owner or occupier of hereditaments to apply to the Court of Exchequer in England and Scotland, showing that by reason

of some doubt or dispute as to the place in which, or in aid of which, such hereditaments are liable to be assessed to the land tax, an assessment has been made on such hereditaments in two or more places, that the application is not made with a view to delay the payment of the land tax legally assessed, and that the applicant is willing to bring into Court or pay the sums assessed. The Court may then make rules and orders calling on the Land Tax Commissioners acting for the several places in question to appear and maintain the assessments or to relinquish them, and in the meantime to stay all proceedings, and may take such measures as it thinks fit to dispose of the questions in dispute.

The Court (sect. 3) may order the Commissioners or the applicant to pay the costs, and may order the refunding of all or any of the land tax paid by the applicant.

This Act only applies to cases where a person has been rated twice for the same land by two separate bodies of Commissioners acting for different districts, each claiming it to be within their district, and not to a case where the land has been rated twice by the same body of Commissioners. In the latter case the remedy is by appeal under the Land Tax Act, 1797 (38 Geo. III. c. 5), s. 23. (*In re Glatton Land Tax* (1840), 6 M. & W. 689.)

Under the Land Tax Act, 1831 (1 & 2 Will. IV. c. 21), s. 2, a person aggrieved by the assessment of his lands at a double rate by the Commissioners, or by the determination of the Treasury, may appeal to the Exchequer, on ten days' notice to the Land Tax Commissioners of the district, or to the Inland Revenue Commissioners, where his application relates to the determination of the Treasury.

The Rules of 1860 make no provision as to these latter applications, but as to applications under the Land Tax Redemption Act, 1838, Rule 124 (p. 772), provides that where the Crown is not a party, the proceedings shall take place on the Plea side of the Court. They would now, presumably, take place as ordinary proceedings in the King's Bench Division.

Other Proceedings.

See the articles on the Inland Revenue and the Commissioners of Customs above, pp. 60, 68; and on Petition of Right below, p. 343.

CHAPTER III.

WRITS OF EXTENT AND DIEM CLAUSIT EXTREMUM.

General Observations.

WRITS of extent and *diem clausit extremum* are the prerogative processes by which the Crown may seize at once the body, lands, goods, and debts or other choses in action of its debtor. The text books usually state that it is based on 33 Hen. VIII. c. 39, s. 37 (below, p. 652), which provides that all and every suit in respect of Crown debts in the Courts therein named may be made by *capias*, extent, subpoena, attachment and proclamation of allegiance, if need shall require, or any of them, or otherwise as the several Courts think expedient, for the speedy recovery of the King's debts. This view was also recently adopted by Swinfen Eady, J., from Chitty on the Prerogative, in *Bishop of Rochester v. Le Fanu*, [1906] 2 Ch. 513; 75 L. J. Ch. 743, and it is to be observed that the usual form of the writ itself refers to "the form of the statute made for recovering of our debts of this nature" (see below, p. 272). But the section itself does not appear to the author to justify this. It would be as reasonable to say that it introduced *capias* and subpoena for the first time in the case of Crown debts, and this does not seem to have been the case. The view taken in 2 Wms. Saund. 70 d, and in Hughes' Report of an Extent (*R. v. Bebb* (1808)), seems to be more reasonable, namely, that extent was a common law remedy of the Crown in the case of debts of record, and was extended by the Act cited above to all debts of the Crown. It is clearly so stated in *Sir William Harbert's Case* (1584), 3 Rep. 11 b, at pp. 12 a, 12 b.

Writs of extent are of two kinds—writs of extent in chief, issued on behalf of the Crown against its debtor, or his debtor, and so on, and writs of extent in aid, issued on behalf of the Crown in aid of a Crown debtor, at his instance, against his debtor.

Writs of extent in chief, again, are of two species, namely, ordinary writs of extent, by way of execution on a judgment obtained by the Crown or other debt of record due to the Crown, and writs of immediate extent, which are issued on an affidavit that the Crown's debt is in danger and without any antecedent judgment or record.

An extent and all the proceedings on it are proceedings at law, see *Wall v. A.-G.* (1823), 11 Price, 643.

A writ of *diem clausit extremum* is similar to a writ of extent, but is issued against the estate of a deceased Crown debtor on an affidavit of debt and death.

Extents, both in chief and in aid, were formerly of very common occurrence. Manning, Exch. Pr. (ed. 2), p. 2, states that at that date (1826) the issuing of extents formed the chief part of the business of the King's Remembrancer's Office, and he devotes a large part of his work to a discussion of them. West on Extents, quite a readable book, is entirely devoted to them, and they occupy about one-sixth of Chitty on the Prerogative. At the present time extents in chief are not of common occurrence, and extents in aid may be said to be practically obsolete. Contested proceedings on extents hardly ever occur. Consequently, it is proposed to give a sketch, with precedents, of the procedure, so far as it is now of practical importance, together with such cases (including those reported since the date of Serjeant Manning's book) as seem to deserve reference, and then to refer the reader, in case he should be concerned to examine the matter further, to the works of Manning, West and Chitty, bearing in mind the modifications which have been introduced into the procedure by the statutory provisions and rules, which are referred to in the following discussion. The scarcity of reported cases on the matter, since the date of the text books to which reference has been made, is, in itself, a testimony to the obsolescence of the procedure. A full precedent of the writ, pleadings, orders, &c. in the last contested case of an extent is printed below, pp. 271 *sqq.*

Immediate Extents in Chief in the First Degree.

The Commission to find the Debt.

Logically, the Crown could not issue execution by way of extent for its debt until the debt was recorded in some way or other, and consequently, where the debt was not of record, a commission formerly issued, under which an inquisition was held to find the debt, and it thus became of record. But now it is provided, by sect. 47 of the Crown Suits, &c. Act, 1865 (p. 699), that a commission to find a debt due to the Crown shall not be necessary for authorising the issue of an immediate extent or of a writ of *diem clausit extremum*.

For a recent instance of a commission to find debts and a writ of immediate extent under the Irish Acts in that behalf, see *In re "Nation" Newspaper Co., Ltd.* (1900), 35 I. L. T. R. 130.

Where there is a commission to find debts, the jury may find the fact of debt on the sole evidence of an affidavit that the debt is due. (*R. v. Ryle* (1841), 9 M. & W. 227; 11 L. J. Ex. 234.)

The Attorney-General's Authority.

This is usually given in the form printed below, p. 271, though it is not necessary to the validity of the process.

The Affidavit of Debt and Danger.

This is made in a form similar to that printed below, p. 271; other forms are given in West, App., pp. 4—15. Such an affidavit is required in order to establish the necessity for the issue of an immediate extent, and it is provided in sect. 47 of the Crown Suits, &c. Act, 1865 (p. 699), that such an extent may be issued on such affidavit according to the former practice. It states that the Crown debt will be lost unless some more speedy course than the ordinary method be taken to recover it. In the case of a bond for payment on a certain day, an immediate extent will issue after that day on an affidavit of debt and danger as above, but where the claim arises on the breach of the condition of a bond the affidavit ought also to state the breach of the condition. (*R. v. Moseley* (1668), West, 325; *R. v. Marsh* (1824), 13 Price, 826.) It does not appear to be necessary to set out the condition in full in the affidavit, if the bond is produced as mentioned below (but see *R. aux. Ricketts v. Sly* (1816), 2 Price, 157). Where the extent is to be issued against a surety, the affidavit need not state that application has been made to the principal debtor for payment, or that he is in decayed or insolvent circumstances. (*R. v. Marsh, ubi sup.*)

The Fiat.

The fiat for the issue of the extent may be granted by the Chancellor of the Exchequer, or one of the judges of the King's Bench Division (Crown Suits, &c. Act, 1865, s. 47, p. 700). The practice is to make an application to a judge of the King's Bench Division in Chambers, producing the affidavit of debt and danger, and, if the debt be by bond, the bond (see West, p. 50; but see also *R. aux. Ricketts v. Sly* (1816), 2 Price, 157), and the Judge, if he thinks fit, signs his fiat at the foot of the affidavit in the form printed below, p. 272.

The Writ.

This is in the form printed below, p. 272, in the case of a simple contract debt. See also the forms in West, App., pp. 16—19.

It will be observed that the present form omits the concluding paragraph of the forms in West. The reference to the commission and inquisition is now inappropriate, as already explained, but there does not seem to be any good reason for omitting the reference to the fiat and to the bond (where the extent is on a bond). The reference to the Act of Hen. VIII. seems to be unnecessary, even if it is correct (see above, p. 189).

It is said that the writ need not set out the breach of condition, where the extent is on a bond (West, 56).

By Exchequer Rule 48 (p. 761), writs of extent and *diem clausit extremum* are to be obtained according to the existing practice, subject to Rule 1 (p. 753), which provides for the method of issuing writs in general, and adds that writs of extent and *diem clausit extremum*, if issuing within 21 days of the fiat, may bear teste the date of the fiat, though the Crown may apply in cases not within this provision for the writ to be tested the date of the fiat.

This rule may be taken to override the principle stated in West, p. 58, that an extent, whenever issued, may be tested the date of the fiat. As to the issue of an extent a long time after the date of the fiat, see *R. v. Mallet* (1815), 1 Price, 395; and *R. v. Robinson* (1720), Bunb. 62; and the discussion of these cases in West, pp. 60 *sqq.*

In *R. v. Maberley* (1834), 2 Dowl. 383; 3 L. J. Ex. 154, the Court refused an application to antedate a writ of immediate extent, so as to coincide with the date of the defendant's bankruptcy. See *R. v. Mann* (1726), 2 Stra. 749, and above, pp. 165, 166.

The fiat covers the issue of any number of writs of extent into different counties in respect of the debt in question. It would seem that subsequent writs issue as a matter of course before the return to the first writ is made; after such return there must be a fresh application, with an affidavit showing the necessity for such additional writs. (*R. v. Gibson* (1743), Park. 35; *R. v. Buchanan* (1754), Park. 176.) If there is an irregularity in the extent, which does not affect the fiat, a new extent may be issued as of course, tested the date of the fiat. If the defendant dies after fiat, but before the issue of the extent, it may nevertheless be issued; and an extent issued before the defendant's death does not abate (see below, p. 212).

An order for the amendment of a writ of extent, which ought to be made by a judge in Chambers, is printed below, p. 277.

An extent against lands and tenements only, without including goods and chattels, &c., appears to be irregular. (*R. v. Lamb* (1824), 13 Price, 649; *M'Cle.* 402.)

The Inquisition.

In general, the inquisition will be conducted in accordance, *mutatis mutandis*, with the Escheat Procedure Rules, 1889, which, by Rule 18, also apply to inquests (by whomsoever held or taken) touching any title or claim of the Crown to or in respect of goods or chattels, or to or in respect of lands or interest in lands otherwise than by way of escheat. These Rules are printed below, p. 833. The sheriff, on receiving the writ, summons a jury and holds the inquiry, summoning the necessary witnesses, who may be attached if they do not attend. (*R. v. Newel* (1707), Park. 269; *R. v. Wood* (1708), Park. 271; see Manning, Exch. Pr. (ed. 2), p. 31.) A form of notice to produce is printed below, p. 273. As to notice to the defendant, see Manning, p. 34. The debtor and other witnesses are examined, and the Crown, the debtor and other persons interested may be represented and adduce evidence. It will be observed from the forms below, pp. 274, 275, that a supplemental inquisition was held in that case to find certain property of the debtor, which had been omitted in the finding on the first inquiry. The object of the inquiry is simply to find the property of the debtor in the county. If the jury finds that he is in possession of such and such property, that is sufficient, but it is as well, if any particular facts affecting the nature or the extent of his property emerge at the inquiry, that there should be a special finding in order to save trouble and expense. (See Manning, Exch. Pr. (ed. 2), pp. 35, 43, 44.) If a third party claims title to the property in question, he ought to be allowed to come in and support his case. (*R. v. Bulley* (1727), Bunb. 233; *R. v. Bickley* (1817), 3 Price, 454.) Subject to this, any objection, which the debtor has to make to the liability of his property to the Crown's debt, must be the subject of a plea to the inquisition, and is not the concern of the jury.

Seizure.

The writ directs the sheriff to seize the body and all and singular the goods and chattels, lands and tenements, debts, credits, specialties and sums of money of the debtor in the county.

With respect to the lands, the sheriff sees that they are found by the jury, and such finding is equivalent to seizure. The seizure of the debts, too, is merely nominal, and the sheriff has no means of compelling payment of them. (Manning, Exch. Pr. (ed. 2), p. 59; West on Extents, p. 34.) They will be the subject, if necessary, of an extent in chief in the second degree (see below, p. 203). Specialties, choses in action, &c. are seized by taking possession of the indicia of title.

There has been some dispute (see West, pp. 74 *sqq.*) whether the

sheriff is obliged to seize all the debtor's property, whatever the amount of the debt, and also whether the lands should be seized if the goods are sufficient. The second point seems to be of no particular importance, as the lands are not actually seized; and as to the first point there is a clear direction in the writ that he should do so, with a *non omittas* clause, and there does not seem to be any objection to his doing so, as the writ expressly commands him not to sell the goods and chattels until further order.

The general priority of the Crown in execution, including execution by writ of extent, is discussed above, p. 162. With regard to the priority of extents *inter se*, this is according to their teste in the case of extents in chief, but an extent in chief is preferred to an extent in aid, even though of prior teste, if not fully executed (*R. v. Quash* (1713), Park. 28); *secus*, if the money has been paid over to the prosecutor of the extent in aid. (*R. v. Bowdage* (1717), Park. 282.) It is stated in the books that where the same goods as are found under one extent are also seized under a second, the second inquisition should mention that these goods are subject to the first extent, and, if the priority is doubtful, each inquisition should mention that the goods are seized under the other.

What may be Seized.

Body.—The *capias* has always been inserted in the writ in recent times, though it is said to have been often omitted formerly. (*R. v. Bebb* (1808), Hughes, 1, 125.) But it is now always accompanied by an intimation to the sheriff that he is not to seize the body of the debtor unless he receive special directions to do so, the Crown thus retaining the means of arresting the debtor if necessity arises. (Compare *R. v. Plaw* (1816), 3 Price, 94.) It is this intimation which is referred to in the second form of return printed on p. 273. The reason of this procedure, by which the Crown deprives itself for the moment of one of its most effective weapons, was the case of *R. v. Cowing* (1877), not reported, where two dummy plaintiffs, who had not paid costs adjudged to the Crown, were arrested; and, on making resistance, were handcuffed and marched off to gaol, thereby giving rise to some popular outcry, and their release by the Home Secretary on their obtaining a rule to set aside the extent. See further as to this case below, p. 398. There appears to be no power to bail a debtor taken under a writ of extent.

By the Extents in Aid Act, 1817 (57 Geo. III. c. 117), s. 6, any person or persons imprisoned under a writ of *capias* on an extent or extent in aid may apply to the Exchequer in England or Scotland for discharge, giving a month's notice to their creditor, such notice to contain the ground of their application, and to enumerate all their

property and effects. The Court may examine them on oath as to their property and effects, and if such disclosure is satisfactory and the Court thinks it reasonable and proper, the Court may issue a writ of *supersedeas quoad corpus* for their liberation. See also *R. aux. Gardner v. Mares* (1816), 2 Price, 151; *R. aux. Greatrix v. Kinnear* (1817), 3 Price, 536, cases before the Act. See further as to release, *R. v. Bennett* (1810), Wight. 1.

Where a defendant in prison under an extent was taken out, without writ, for the purpose of giving evidence, by order of the Revenue authorities, and was afterwards brought back and detained in the same custody, it was held that such custody was lawful. (*R. v. Renton* (1848), 2 Ex. 216; 17 L. J. Ex. 204.) The decision rested on the general principle laid down in the cases there cited, that a person in prison at the suit of the Crown, who escapes, can be retaken by the person guarding him for the Crown.

Applications for discharge will not be granted on affidavit, *semble*; the defendant should traverse the inquisition (*R. v. Seton* (1820), 8 Price, 671; *R. v. Bennison* (1844), 1 D. & L. 613); unless, perhaps, the defendant could establish by affidavit to the satisfaction of the Court that the debt in respect of which he was imprisoned had been paid. (*R. v. Bennison, ubi sup.*)

Goods and Chattels.—All goods and chattels, the absolute property in which remains in the debtor at the date of the teste of extent (which date, in all ordinary cases, is the date of the fiat (see above, p. 192), and this includes any part of the day on which the extent was tested (Manning, Exch. Pr. (ed. 2), p. 47)), may be taken under the extent. Any person who has a special property in such goods may traverse the inquisition, if the jury have not made a special finding in his favour. See an instance in *A.-G. v. Trueman* (1843), 11 M. & W. 694; 13 L. J. Ex. 70, where the jury found that Trueman claimed a lien on the extended property, but not that he was entitled to it, and he was therefore put to his traverse.

Where an extent is issued against more than one person, the separate goods of each may be taken, and where it is issued against several persons as joint debtors, the joint and separate goods of all may be taken; but where there are several partners and the extent is against one only, the jury should find, and the Crown may seize, the goods of the partnership, but the Crown may only sell the property of the partner named in the writ, *i.e.*, his share of the surplus after payment of debts. (*R. v. Sanderson* (1810), Wight. 51; compare *Spears v. L. A.* (1839), 6 Cl. & F. 180.) A leasehold may, it is said, be regarded either as a chattel or as land (*Sir Gerrard Fleetwood's Case* (1611), 8 Rep. 171 a), but the case scarcely bears out the statement.

Goods which have come to the debtor as executor or as husband of an executrix cannot be extended (*Buckler v. Rogers* (1623), 2 Roll. Abr. 159), unless, perhaps, he has treated them as his own (see *Quick v. Staines* (1798), 1 B. & P. 293).

Where the goods of the extendee are wrongfully in the hands of third parties, the jury should find this specially. (Manning, p. 48.) A pawnee of the debtor's goods should not re-deliver them after the extent has issued, since the interest of the debtor in them is bound from the date of the teste. (See *Ratcliff v. Davis* (1611), 1 Bulst. 29, and above, p. 169.)

The writ specifically commands a return of goods which any other person has to the use of or in trust for the debtor.

Lands.—As to the extent to which Crown debts operate as a charge on the lands of Crown debtors and public accountants, see above, pp. 150, 158; and as to the priority of the Crown with regard to mortgagees, &c., see p. 168.

Fee simple lands of a debtor may, of course, be taken under an extent, but not, it is said, against a surviving joint tenant (Co. Litt. 185 a; *Case of Mines* (1567), Plowd. 310, 321), or against a debtor's widow holding the lands in dower or as her jointure (Fitzh. N. B. 459; Co. Litt. 31 a); unless the Crown's debt preceded the creation of her right (*R. v. Seyntloo* (1560), Dy. 224 b; Bro. Abr. Distress, pl. 72).

The sheriff may also seize land of which the debtor is *cestui que trust* (*Walter de Chirton's Case* (1557), Dy. 160 a; *Sir Edward Coke's Case* (1624), Godb. 289; *A.-G. v. Sands* (1669), Hard. 488, 495), or of which he has an equity of redemption (*R. v. De la Motte* (1801), Forr. 162; *R. v. Coombes* (1814), 1 Price, 207), but subject to the mortgage (see above, p. 168), or as to which he has power of revocation of uses (*Sir Edward Coke's Case*, *ubi sup.*, at p. 294; *Smith v. Wheeler* (1672), 1 Vent. 128, 132), or which he has agreed to sell. (*R. v. Snow* (1804), 1 Price, 220, n.) Lands in the hands of the heir in fee or in tail of a Crown debtor are extendible by 33 Hen. VIII. c. 39, s. 52, but this is not so in the case of a debtor *paravaile*, unless heirs were named in the document constituting the obligation of the debtor *paravaile* to the Crown debtor. (*Anon.* (1580), Sav. 2, pl. 5.) Land in the hands of a *bonâ fide* alienee of a tenant in tail is not extendible. (*Lord Anderson's Case* (1597), 7 Rep. 21 a.) By 25 Edw. I. c. 8 (9 Hen. III. c. 8, Ruff.), it is provided that the Crown will not seize land or rent for any debt so long as the present goods and chattels of the debtor suffice to pay the debt, and therefore it is stated that the heir of a Crown debtor shall not be charged if his executors have assets (see Manning, Exch. Pr. (ed. 2), pp. 39, 56, 73, and *Kameis v.*

Hide, 5 Edw. I., Mem. Scacc. (ed. Maynard), fo. 7), nor the feoffee who comes in by purchase, if the heir have assets. (*Anon.* (1582), Dy. 67 b, margin, per Manwood, C. B., on both points.) But *quare* whether this is not abolished by 33 Hen. VIII. c. 39, s. 37, which gives the Crown execution upon the body, lands and goods of the debtor at one time and indiscriminately. (See *Anon.* (1583), Sav. 52, pl. 111.)

Rents service and rent-charges are extendible as part of the real estate, but arrears form part of the debts or choses in action. (*Lillingston's Case* (1608), 7 Rep. 38 a.)

It is said that leaseholds may be extended at their yearly value as lands or appraised at a gross price as part of the goods and chattels. (See *Sir Gerrard Fleetwood's Case* (1611), 8 Rep. 171 a.)

Copyholds are not extendible. (*R. v. Lord Lisle* (1726), cited in *R. v. Budd* (1758), Park. 190, 195; compare *Duke of York v. Marsham* (1667), Hard. 432; *Anon.* (1702), 7 Mod. 38, pl. 48.)

As to the effect on an extent of an attendant term, see *R. v. Smith* (1799), M'Cle. 407, n.; *R. v. St. John* (1816), 2 Price, 317; *R. v. Lamb* (1824), 13 Price, 649; M'Cle. 402.

Debts, Credits and Specialties.—The inquisition should state the nature of the debt and the person indebted, and should be definite in its terms, with a view to future proceedings.

The debts and other choses in action of the extendee are bound, like his other property, from the date of the writ, so as to nullify as against the Crown any assignment between that date and the date of the caption of the inquisition, but not so as to prevent the creditor's suing the extendee (*Lakeman v. M'Adam* (1820), 8 Price, 576), or the extendee's paying the creditor. This is the principle on which West on Extents, pp. 162 *sqq.*, explains the contradiction between *R. v. Arnold* (1710), Vin. Abr. Creditor and Bankrupt (Z.), and *R. v. Green* (1729), Bunb. 265, with the latter of which agrees *A.-G. v. Elwell* (1725), Bunb. 199; and see also *R. v. Glenny* (1816), 2 Price, 396.

It is stated (West, 165) that the proper method of finding bills of exchange or promissory notes, which are not yet due, is to find that the extendee is possessed of the bill or note, to describe it, and to state that it was accepted or made by such an one. See the inquisition set out in *R. v. Copeland* (1796), Hughes, 204, 208, and the decision in *R. v. Bebb* (1808), Hughes, 1, generally.

Though the Crown cannot take proceedings in respect of choses in action till they come to maturity, it can seize them at once under an extent. (*R. v. Chapman* (1633), Hughes, 118; *R. v. Brace* (1634), Hughes, 119.)

Where the extendee's money was in the hands of the Accountant-

General in Bankruptcy, the sheriff wrongly returned that he had seized the money. Under the circumstances the ordinary order which had been made upon him to pay over the money was discharged. (*R. v. Austin* (1842), 10 M. & W. 691; 12 L. J. Ex. 85.)

The debt should not be found on the inquisition where a debtor *paravaile* has made or accepted notes or bills in favour of the extendee, as in *R. v. Heath* (1759), Hughes, 155; *R. v. Cust* (1781), Hughes, 186; *R. v. Dawson* (1810), Wight. 32.

Under an extent against A., a debt due to A. and B. may be found, but B. may have an account against the Crown in equity. (West, 170, 171, and cases there cited.) The position is dealt with in *R. v. Ramsbottom* (1818), 5 Price, 447.

Money.—The books state that money *bonâ fide* disposed of by the debtor between the teste of the extent and the caption of the inquisition cannot be followed by the Crown. (West on Extents, p. 172; Manning, Exch. Pr. (ed. 2), p. 55.) No doubt it will be difficult to follow it, but it does not seem to be clear that the general principle does not apply here, too, and does not entitle the Crown to seize such money, if it can.

For extents against bankers to recover Crown moneys paid into the private account of an officer of the Crown, see *R. v. Ward* (1837), 2 Ex. 301, n.; *R. v. Adams* (1848), 2 Ex. 299; and above, p. 144.

The Return.

Forms of return, with the inquisition annexed, are printed below, pp. 273, 274; and see other forms in West on Extents, App., pp. 18—25. The inquisition is appended to the return, and in it the jury find the various species of property belonging to the debtor in the county, and put valuations upon them, by yearly value in the case of lands and by gross appraisement in the case of everything else, and the sheriff states that he has seized such property into the King's hands. An inquisition ought to be as certain as an indictment or declaration. (*Protector v. Cutterel* (1656), Hard. 58.)

The return is made to the King's Remembrancer's Department to be filed. An extent may be made returnable in vacation. (*R. v. Renton* (1848), 2 Ex. 216; 17 L. J. Ex. 204.)

Melius Inquirendum.

Where the jury find against the King, or where the inquisition is insufficient or defective in some respects, the Crown may apply for a writ of *melius inquirendum*, showing good cause for its application. But it is said that after one *melius inquirendum* the Crown must rest content, and cannot obtain another. (*Paris Stoughter's Case* (1610),

8 Rep. 168 a.) If the findings on the two inquisitions are not so repugnant that they cannot be read together, they are to be taken as one office. (*Inche v. Roll* (1615), Hob. 50; *Anon.* (1570), Dy. 292 a, pl. 71.) In *Layton v. Manlove* (1690), 2 Salk. 469, it was said that an inquisition finding some parts well, and nothing as to others, might be supplemented by a *melius inquirendum*, but that it was void if defective in the parts found; but this was criticised in *E. p. Duplessis* (1754), 2 Ves. Sen. 538.)

Where the sheriff returned *nulla bona*, and the extendee had assigned all his property in trust for his creditors before the teste of the extent, a writ of *melius inquirendum* was ordered, in order that the fact of the assignment might be found, and so the Crown might be enabled to have the question of its validity against the Crown tried. (*R. v. Jobling* (1849), 4 Ex. 483; 19 L. J. Ex. 14.)

Sheriff's Fees and Poundage.

See above, p. 154.

Realisation and Sale.

Eight days after the return has been filed, if the time for return has expired, or, if not, eight days after such time has expired, the Crown, without giving a rule to claim (as to this, see West on Extents, p. 174), may proceed to realise the property mentioned in the inquisition, or recover any debt, or apply for an order for the sale of any real estate mentioned therein, or for an order to have paid to the Crown any money mentioned in the sheriff's return; but if any debt is returned as owing to the extendee, and there is danger of its being lost, an extent may be obtained in the usual way to recover this before the expiration of such eight days. (Exchequer Rule 48, p. 761.)

The Crown Debtors Act, 1785 (25 Geo. III. c. 35), under which sales of hereditaments taken under writs of extent and *diem clausit extremum* may be effected, is set out in abstract below, p. 279, and in the note to sect. 50 of the Crown Suits, &c. Act, 1865, below, p. 701. A form of conveyance by the King's Remembrancer to the purchaser under that Act is printed below, p. 279. The Court, on granting the motion for sale, will only order so much land to be sold as is necessary to make up the debt in addition to what has been realised by the goods and chattels, &c. (*R. aux. Hutton v. Hopper* (1816), West, 225.) The motion need not be made by the Attorney-General in person. (*R. v. Bulkeley* (1827), 1 Y. & J. 356.)

Where the land is subject to a mortgage, notice of the motion should be given to the mortgagee. (*R. v. Coombes* (1814), 1 Price, 207.)

The interest of a Crown debtor in leaseholds renewable for lives was held to come within the Crown Debtors Act, 1785, in *R. v. Lane* (1840), 6 M. & W. 489; 9 L. J. Ex. 175. In the same case the King's Remembrancer was ordered to certify whether a sale by auction or by private contract was the more advantageous, that official having refused to direct a sale by private contract, contrary to the usual practice, without an order of the Court.

Where a purchaser had re-sold at a loss lands before they had been conveyed to him by the King's Remembrancer, the Court, with the Attorney-General's consent, ordered the conveyance to be made direct to the sub-purchaser, the original consideration being expressed in the deed. (*R. v. Rawlings* (1835), 2 C. M. & R. 471; 4 L. J. Ex. 295.)

Where money had been paid into Court under a sale, and, owing to investment and re-investment of the dividends, had increased to a sum more than sufficient to satisfy the Crown debt, it was held that the Crown was entitled only to principal, interest and costs, and not to any share of the surplus arising from the investment. (*R. v. De la Motte* (1857), 2 H. & N. 589; 27 L. J. Ex. 110.)

As to goods, a writ of *renditioni exponas* may be issued without any motion in Court. (Manning, Exch. Pr. (ed. 2), 63; West on Extents, 219.) The terms of the writ are given in West, 220.

At a sale by auction under an extent the Crown agent made a *bonâ fide* bid for himself, and it was held that the sale was not vitiated; but the decision seems only to apply to that particular case. (*R. v. Marsh* (1831), 1 Cr. & J. 406.)

In *R. v. Burns* (1827), 1 Y. & J. 579, the sheriff was ordered to pay over to the Crown the money realised by the sale, although the defendant had brought a writ of error in the proceedings in respect of which the extent had issued.

Motion to Set aside.

A form of rule granted on a motion to set aside an extent is printed below, p. 278. In that case the rule was obtained *ex parte* in the ordinary way, on the grounds therein mentioned. Generally speaking, the ground taken may be some defect apparent on the face of the proceedings, or some objection which does not appear in the proceedings, such, for instance, as the misconduct of the sheriff, and must be proved by affidavit. A great number of various objections are enumerated in Manning, Exch. Pr. (ed. 2), pp. 112 *sqq.* The objection may refer either to the extent or to the inquisition. But it would appear that, if the affidavit on which the extent was granted

sufficiently states the fact of the defendant's insolvency, or other cause of urgency, the Court will not allow the defendant to adduce evidence to set the extent aside on the ground that there was no such insolvency or urgency. (*R. v. Scott* (1816), West, 180; *R. v. Lawton* (1817), West, 180.)

The motion may be made before the entry of appearance and claim (*R. v. Collingridge* (1816), West, 184), and after appearance it may be made on grounds objecting to the process itself, but not, apparently, to any irregularity in the execution of the process. (*R. v. Mann* (1726), 2 Stra. 749, 759, 760; *R. v. Pearson* (1816), 3 Price, 288, 290, 291.)

It was held that, except under special circumstances, the defendant cannot move after having obtained time to plead (*R. aux. Horn v. Scott* (1816), West, 184; *R. v. Scott* (1817), 4 Price, 181), but in such circumstances he must take his objection by demurrer.

The general rule, however, is said to be that the objection must be taken as soon as the defendant is aware of it (*Hodge v. Borroden* (1818), Manning, 114), and so, in one case, the Court permitted the motion to be made after the issue of a *venditioni exponas*, the defendant not having appeared and claimed. (*R. v. Boyes*, West, 184.)

Where a rule had been regularly argued and confirmed, the Court refused the application of the Crown to have it re-argued. (*R. v. Marsh* (1824), 13 Price, 826.)

The Court will, at any stage, grant a rule for an *amoveas manus* on payment of the debt by the extendee or out of money in the hands of the sheriff. (*R. aux. Hutton v. Hopper* (1816), West, 187; *s. n. R. aux. Simpson v. Hopper*, 3 Price, 40.) The *amoveas manus* is necessary because the Crown is in possession under the inquisition. Below (p. 278) are printed orders that the sheriff should withdraw and stay proceedings, the matter having been compromised. Strictly, as just explained, there should have been an *amoveas manus*, but see *Poole v. Shergold* (1785), 1 Cox, 160. There, however, the Treasury had compromised the debt, and the extent, though in the sheriff's hands, had never been executed. It was held that this was no objection to the title, although there had been no *amoveas manus*.

Appearance and Claim.

A form of memorandum of appearance and claim is printed below, p. 275. By Exchequer Rule 49 (p. 761) the claimant or his attorney must give notice to the solicitor of the Department who is conducting the matter, and may obtain a copy of the writ and inquisition at the King's Remembrancer's Department, which copy may commence as in Sched. C., No. 1, p. 795. (See also Rule 65, p. 764.)

Claims may be entered at any time before process issued or order obtained for realising the property returned into Court; they are to be entered in the respective records and in the claim book. (Rule 107, p. 769.) If part only of the property is claimed, the remainder may be dealt with as if there had been no claim. (Rule 106, p. 769.)

As to the appearance of third parties, see what is said below.

Pleas.

The solicitor of the Department, who is conducting the matter, on the claim being entered, may serve a notice requiring the defendant to plead in fourteen days from service of the notice, otherwise judgment, and such time may be extended by order of a judge. (Exchequer Rule 49, p. 761.) The pleadings are to be delivered as in other cases. (Rule 50, p. 761; see the practice below, pp. 227, 231.)

A recent form of pleas and of a replication by the Attorney-General are printed below, pp. 276, 277. See also the more formal pleas in West, App., pp. 94. *sqq.* For an order to strike out part of a plea (which ought to have been made by a judge in Chambers), see below, p. 277.

The general principles governing the traverse of an inquisition taken under an extent are the same as those which govern a traverse of an inquisition of escheat, as to which see below, p. 438, and reference must be made to the general article on pleading below, p. 561.

The inquisition, of course, serves as the Crown's declaration, and the Crown only pleads in replication, and, if necessary, in sur-rejoinder. The plea may be either a denial or an allegation of discharge of the debt on the part of the extendee or those claiming under him, or it may be a claim by third parties who claim to be owners of, or to have some overriding interest in, the property which has been extended as being the property of the extendee.

A third party who so pleads must, on the general principle referred to on pp. 182, 264, not merely deny the property of the extendee; he must set up a title in himself, and not merely demur. (*R. v. Soulby* (1827), 1 Y. & J. 249.) A reported instance of such a claim by a third party (who claimed a lien on the extended property) will be found in *A.-G. v. Trueman* (1843), 11 M. & W. 694; 13 L. J. Ex. 70. As to compelling the Crown to reply, see p. 218.

No time for rejoinder is fixed in the rules. The time formerly was four days (West, 214), and this should probably be adhered to now.

There is no reason why the defendant should not demur in a proper case, though there seems to be no instance in the case of an extent,

where this has been done. But it will probably be more advisable to move to set aside the extent before pleading. (See above, p. 200.)

Trial and Judgment.

See the practice below, pp. 223, 232, Manning, Exch. Pr. (ed. 2), pp. 119 *sqq.*, and the remarks on *amoveas manus* above, p. 201.

Costs.

See the general article on costs below, p. 618. Costs on an extent were formerly taxed in the King's Remembrancer's Department. (*R. v. Collingridge* (1816), 3 Price, 280.)

Extents in Chief in the First Degree, other than Immediate Extents.

These are extents which follow on a judgment obtained for, or other debt of record due to, the Crown (including bonds, under 33 Hen. VIII. c. 39, s. 36), or debts which have been made debts of record by a commission to find debts. The procedure is similar to that followed in the case of immediate extents, with the exception of the affidavit of debt and danger, and it seems that a fiat is required except in the case of extents on judgment debts. On a judgment the Crown has an extent as of right, without any other formality than the præcipe for the writ.

Extents in Chief in the Second and Subsequent Degrees.

Where the inquisition returns a debt owing to the extendee, that debt in its turn becomes the proper subject of an extent, and an extent in the second degree, either immediate or not, may issue to seize it, in a similar manner to an extent in chief in the first degree. The debt, by the inquisition, has become a Crown debt of record, and the debtor *paravaile* a Crown debtor. The Crown may proceed by extent in the second degree before it has actually endeavoured to realise its debt out of the property of the primary debtor. (*R. v. Larking* (1820), 8 Price, 683.) As to the time of issuing the writ, see *R. v. Pearson* (1816), West, 242, but Exchequer Rule 48 (p. 761) now provides that an immediate extent in the second degree may be issued without waiting the time therein mentioned. There seems to be no limit to the number of degrees in which extents in chief may be issued; it is otherwise in the case of extents in aid. (*A.-G. v. Poultney* (1665), Hard. 403.) The practice follows closely that described above in the case of extents in the first degree, except that the writ and inquisition on the original extent must be produced to

the judge in Chambers, with an affidavit declaring that the defendant was found indebted to the primary debtor under the inquisition, and (in the case of an immediate extent) that there is danger of the debt being lost. The writ will recite the inquisition. The defendant will be able to plead that no debt was due from the primary debtor to the Crown, and also may plead anything which would be a good defence as between himself and the primary debtor.

Extents in Aid.

In the case of an extent in chief in the second and subsequent degrees, it is the Crown which proceeds for its own benefit against the debtor of a Crown debtor or against that debtor's debtor and so on; in the case of an extent in aid the Crown debtor employed the prerogative process to recover debts due to him, ostensibly in order that he might be able to pay the Crown, but mainly for his own advantage. The commonest case was that of a surety, the procedure being based on 25 Edw. I. (9 Hen. III., Ruff.), c. 8, which provides that sureties, who have had to pay their principal's debt, may have the lands and rents of the debtor. But the superior efficacy of the prerogative process naturally made the subject more and more eager to employ it, on the same principle as that on which an imprisoned debtor was anxious to assert himself to be a Crown debtor, since he was thereby removed to a prison which was (by comparison) more salubrious. (See 1 Rich. II. c. 12, s. 4.) The practice, therefore, arose of procuring the issue of an extent *pro formâ* against the Crown debtor (which could easily be done, since most people are in debt to the Crown for current taxes, if for nothing else); or *pro majori cautelâ*, an assignment of some debt could be made to the Crown, a mischief alluded to in 7 Jac. I. c. 15 (see above, p. 153), and thereupon the Crown debtor was enabled to obtain an extent in aid for his own purposes against his own debtor. This ingenious process was limited at first to the third degree (*Ewin's Case* (1678), Park. 259; *R. v. Boon's Estate* (1743), Park. 16; *A.-G. v. Poultney* (1665), Hard. 403), but later it was extended to the fourth degree, by excluding the Crown debtor himself from the reckoning. (*R. aux. Austin & Co. v. Lushington* (1814), 1 Price, 94.) It may have been this last case which drew attention to the scandal. At any rate the Extents in Aid Act, 1817 (57 Geo. III. c. 117), ss. 1—5, by limiting the procedure to its more legitimate application, had the effect of rendering extents in aid, in the end, practically obsolete. It enacts (i) that the amount of the debt due to the Crown is to be stated in the fiat, and that the amount to be stated in the writ is to be, if the debt due to the Crown

debtor equals or exceeds the debt due to the Crown, the amount of the former, but if it is less than the debt due to the Crown, the amount of the latter. (ii) If the amount levied exceeds the amount endorsed on the writ, the balance is to be paid into Court, and paid out, on application, as the Court thinks fit. (iii) The Act is not to affect the ordinary remedies of the Crown debtor against his debtor. (iv) The following persons are not entitled to extents in aid—(a) simple contract debtors to the Crown; (b) persons indebted to the Crown by bond for paying any duties or sums of money in respect of their trades, professions or businesses; (c) sub-distributors of stamps who have given bonds to the Crown; (d) sureties by bond to the Crown, until they prove that the Crown has demanded payment from them in default of their principal, and then only to the amount of such demand; (e) sureties by bond to the Crown for the payment of duties by insurance companies.

This prohibition, however, does not extend to persons who are simple contract debtors to the Crown by reason of the collection or receipt of money arising from the Revenue for the Crown's use, if such persons are bound by bond to pay over such money.

It is important to notice that a Crown debtor cannot continue to utilise prerogative process, either by extent in aid or otherwise, against his own debtor after his own debt to the Crown has been paid. (*R. aux. Hollis v. Bingham* (1833), 2 Cr. & J. 130; 1 Cr. & M. 862; 2 L. J. Ex. 266.) This case must be taken to overrule the resolution in *R. v. Clarke* (1726), Bunb. 221.

For the practice in the case of the use of prerogative process by sureties who have paid the Crown's debt, see *R. v. Robinson* (1855), 1 H. & N. 275, n.; *R. v. Salter* (1856), 1 H. & N. 274. Similarly, persons in this position have a right to the remedy by *scire facias*. (*R. v. Fay* (1878), 4 L. R. Ir. 606.)

The Extents in Aid Act, 1817, and other causes having rendered extents in aid practically obsolete, for further information regarding them the reader is referred to West on Extents, pp. 251 *sqq.* (though West, it must be remembered, wrote before the passing of the statute), and Manning, Exch. Pr. (ed. 2), pp. 71 *sqq.*

The practice resembles that described above in the case of an immediate extent in chief in the first degree. The affidavit, however, must state (see forms in West, App., pp. 33 *sqq.*), (i.) the debt due from the prosecutor to the Crown; (ii.) the debt due to the prosecutor from his debtor or from his debtor's debtor, and so on; (iii.) the danger arising from the insolvency of such debtor, his debtor, and so on; (iv.) that such debt is due to the prosecutor originally and *bonâ fide*, without any trust; (v.) that it has not been put in suit in any other

Court; (vi.) that the prosecutor is consequently unable to satisfy the Crown, and that the Crown is in danger of losing its debt.

The extent *pro formâ* is then granted, on which the prosecutor must prove his indebtedness to the Crown. It was said in *R. aux. Hill v. Hornblower* (1822), 11 Price, 29, that he must do so by *virâ voce* evidence, and not merely by the affidavit on which the extent was granted, but this case was disapproved of in *R. v. Ryle* (1841), 9 M. & W. 227; 11 L. J. Ex. 234, where it was said that it gave satisfaction to no one except the author of *West on Extents*. On the return of the inquisition, the affidavit, the bond, if any, the extent and the inquisition are taken before the judge in Chambers, and a fiat is given for the extent in aid, which is then proceeded with in the regular way.

Diem Clausit Extremum.

This writ is based on 25 Edw. I. (9 Hen. VIII., Ruff.), c. 18, which provides: "If any one holding of us lay fee do die, and our sheriff or bailiff do shew our letters patent of our summons for the debt which the dead man did owe to us, it shall be lawful for our sheriff and bailiff to attach and inventory all the goods and chattels of the dead being found in the lay fee to the value of the same debt, by the view of lawful men, yet so that nothing thereof shall be taken away until there be paid unto us the debt clearly made to appear; and the residue shall be left to the executors to perform the testament of the dead; and if nothing be owing unto us by him, all the chattels shall go to the use of the dead, saving to his wife and his children their reasonable parts."

It has already been noted that the death of a Crown debtor does not affect an extent tested before his death (p. 192), but the writ of *diem clausit extremum* is the equivalent of an extent tested after his death. Formerly a commission to find the debt and the death was necessary before the issue of the writ, but now, by the Crown Suits, &c. Act, 1865, s. 47 (p. 699), it is provided, as in the case of an extent, that such a commission is no longer required, and the writ is issued on an affidavit of debt and death. This section, therefore, also disposes in the negative of the query (see *R. v. Hassell's Estate* (1824), 13 Price, 279), whether it was necessary to allege danger as well as death in the affidavit. It also appears to abolish the effect of the cases which rested on the distinction between debts of the deceased to the Crown which were of record in his lifetime and those which were not, such as *R. v. Boon's Estate* (1743), Park. 16; *R. v. Curtis* (1750), Park. 95; and *A.-G. v. Perry* (1734), 2 Com. 481; and apparently also

in the case of Crown debtors in the second or third degree there is no longer any necessity that the debt of the deceased shall have been found by inquisition in his lifetime, as had been held in *R. v. Boon's Estate, ubi sup.*, and *R. aux. Renew v. Cross* (1687), cited Park. 19.

As to seizing land devised without proceedings against land descended, see *R. v. Hassell's Estate* (1824), 13 Price, 279. It has been held that, whereas in the case of joint tenants a moiety only of the land should be extended, if one of them die before the extent, the land cannot be extended against the survivor. (*R. v. Manning* (1739), 2 Com. 616.) For a *diem clausit extremum* against a Crown debtor in the third degree, see *R. v. Lord Crewe* (1836), 5 Dowl. 158.

The procedure generally, subject to what has been stated, is the same as that on an immediate extent in chief in the first degree. A form of writ is printed below, p. 280.

CHAPTER IV.

SCIRE FACIAS.

The Nature of the Writ.

SCIRE FACIAS is the proper process for the recovery of debts of record due to the Crown, of whatever kind, whether by judgment, recognisance, or bond, or by inquisition, in cases where there is no urgency or death to justify recovery by writ of extent or *diem clausit extremum*; see, however, *A.-G. v. Sewell* (1838), 4 M. & W. 77; 7 L. J. Ex. 245, and the observations on p. 143, above. A surety paying a debt to the Crown may have the benefit of the Crown process. (*R. v. Fay* (1878), 4 L. R. Ir. 606.)

A recent precedent of pleadings on a *scire facias* on a lunacy bond is printed below, p. 281. (Compare *R. v. Chambers* (1843), 11 M. & W. 776.) The procedure is now rare and only requires brief notice.

Old forms of pleadings will be found in Trem. P. C.; on a recognisance, *R. v. Hart* (1685), p. 372; on an inquisition, *R. v. Butcher* (1683), p. 576; *R. v. Greenhill* (1662), p. 600; on bonds, *R. v. Thorpe* (1661), p. 584; *R. v. Newton* (1664), p. 594; *R. v. Broadnax* (1663), p. 608; *R. v. Morris* (1665), p. 613.

It is specially provided by 21 Jac. I. c. 14, s. 2, that where an information of intrusion may fitly and aptly be brought on the King's behalf, no *scire facias* shall be brought, whereunto the subject shall be forced to a special pleading and be deprived of the grace intended by the Act.

It is stated in Staundford, Praerog., 54 b, that if the King does not seize under an office for a year and a day thereafter he may not seize without a *scire facias* against the tenant; in *Anon.* (1707), 2 Salk. 603, it is stated that in the case of the King there need not be any *scire facias* after the year, but this, apparently, refers only to judgments.

For instances of *scire facias*, on recognisances, see *R. v. Bingham* (1829), 3 Y. & J. 101, where an arbitrator to award the sum payable under the recognisance had been substituted by order of the Court for the arbitrator named therein, and *R. v. Bayly* (1841), 1 Dr. & War. 213; on bonds, see *Yale v. R.* (1721), 6 Bro. P. C. 27; *A.-G. v. Winstanley*

(1831), 2 Dow & Cl. 302; *R. v. M'Leod* (1816), 3 Price, 203; *R. v. Ellis* (1816), 3 Price, 323; *R. v. Chambers* (1843), 11 M. & W. 776; on inquisitions, *A.-G. v. Newman* (1815), 1 Price, 438; *R. v. Morrall* (1818), 6 Price, 24. As to consideration money under the Land Tax Redemption Act, 1813, see above, p. 143.

Procedure.

Under the old practice the *scire facias* was signed by the King's Remembrancer and tested by the Lord Chief Justice, recited the bond, &c., and commanded the sheriff to warn the defendant to appear on a day certain to show cause why the debt should not be levied. No fiat was required. (*R. v. Thompson* (1816), 3 Price, 278, 279.) If the sheriff's officer delivered a copy to the defendant or left it at his usual place of abode, the return was "*scire feci*," but if the defendant could not be found in the county before the return day, and his usual place of residence there could not be ascertained, the return was "*nihil habet in balliva sua per quod scire facere potui*" (Manning, Exch. Pr. (ed. 2), p. 138), and then an *alias scire facias* was issued.

The procedure is now governed by Exchequer Rules 42—47 (p. 760), and forms of writ in the case of bonds, recognisances, and inquisitions, and against executors, are given in Schedule A., Nos. 5—9 (below, p. 778). The writ is to be in force six calendar months, renewable as in the case of a subpœna (see below, p. 230). Service is, where practicable, to be personal, but such service may be dispensed with, as in the case of an ordinary writ. Appearance is to be within fourteen days from the day of service, inclusive of that day, and, if the defendant appears, he must plead within fourteen days after appearance; otherwise judgment.

If the defendant does not appear, on the filing of the writ and an affidavit of service or the judge's order dispensing therewith, judgment may be signed and execution issued in fourteen days (see below, p. 754) from the day of signing judgment. If the defendant appears after the ordinary time for appearance, as he may at any time before the signing of judgment, notice must be given to the solicitor of the Department issuing the writ, and he must plead within four days of his appearance.

As to withdrawal of plea and confession, see Rules 79, 80 (pp. 765, 766), and for form of record, Sched. C., No. 3 (p. 795).

The practice generally is that of other proceedings at law on the Revenue side of the King's Bench Division, and is discussed at length below, pp. 211 *sqq.* No fiat is required, except in the case of a lunacy bond, where the fiat of the Attorney-General or an order of

the Lord Chancellor has been said to be necessary, if the bond is put in suit by a private solicitor. (*R. v. Cox* (1851), not reported; *R. v. Kenyon* (1858), not reported.)

Where a bond is joint and several, all the parties named in it can be put into one writ, as in the precedent below, p. 281; but if the bond be put in suit only against some of the parties named in it, a separate writ is necessary against each, unless the words "or any two of us" appear in the bond, in which case two can be put into one writ. It may, however, be at times convenient to have separate writs in order to obtain judgment against one defendant without waiting until it can be obtained against all; but an interlocutory judgment perhaps might be signed, *quantum valeat*, against one defendant where three are named in one writ, and proceedings carried on against the others, or judgment could be signed against one and the case abandoned against the others. As to these matters, see *Eccleston v. Clipsham* (1669), 1 Wms. Saund. 153; *R. v. Young* (1794), 2 Anst. 448; *R. v. Chapman* (1797), 3 Anst. 811.

Pleading.

The Crown delivers no declaration, but the defendant pleads directly to the writ. (See the precedents below, pp. 282, 283.) He may plead in abatement or in bar, or demur. Generally, the general observations made on pp. 227, 561 as to pleading apply here, and for specific cases which are not of sufficient importance to be specially noted here, see Manning, Exch. Pr. (ed. 2), pp. 139—141. A *scire facias* on a bond need not state a breach of the condition; the defendant will plead, if so advised, that there has been no such breach, or general performance, and this allegation will be traversed by the Crown in replication, as in the precedent below, p. 284. (See *R. v. Wiblin* (1825), 2 C. & P. 10.)

A plea to a *scire facias* of payment after day but before writ issued, and acceptance by the Crown in satisfaction, is not sufficient, the Crown not being bound by 4 & 5 Ann. c. 3 (4 Ann. c. 16, Ruff.), s. 12. (*R. v. Ellis* (1814), 1 Price, 23; see *R. v. Bayly* (1841), 1 Dr. & War. 213, 217.)

Where the *scire facias* is founded upon an inquisition, the defendant may plead to the *scire facias* without otherwise traversing the inquisition. (*Anon.* (1520), Keilw. 200 b, pl. 15.) The statement in Manning, Exch. Pr. (ed. 2), 140, on this point is to be preferred to his contradictory statement on p. 199, note (l).

CHAPTER V.

PRACTICE IN PROCEEDINGS AT LAW ON THE REVENUE SIDE OF
THE KING'S BENCH DIVISION.**General Observations.**

THE practice in proceedings at law on the Revenue side of the King's Bench Division is still governed in the main by the Rules of 1860, as amended by the Rules of 1861 (printed below, pp. 753, 800), which only apply to proceedings at law and not to proceedings in equity. (See Rule 143, p. 774.) These Rules were made under sect. 26 of the Queen's Remembrancer Act, 1859. That section was repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), but sect. 4 of that Act preserves these Rules. By sect. 5 of that Act, the enactments relating to the making of Rules of Court contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it, are extended to all proceedings by and against the Crown. The power, consequently, to make Rules with regard to the practice on informations is now vested in the body known as the Rule Committee. They have not, so far, annulled the Rules of 1860, but in certain respects these Rules are superseded or varied by R. S. C., Ords. XXVIII., XXXIV., XXXVIII., LII., LVIII., LXIV., LXV., LXVI., LXX., which are applied, so far as applicable, to all proceedings on the Revenue side of the King's Bench Division by Ord. LXVIII. r. 2, and by Ord. II. r. 8, applied by Ord. LXVIII. r. 2A. Ord. LXVIII. r. 1, provides that, save as aforesaid, nothing in the Rules of the Supreme Court is to affect the procedure or practice on the Revenue side of that Division. Further, the Rules themselves provide (Rule 142, p. 774) that, except as varied by the Rules or otherwise directed by the Court or a judge, the then present practice is to be pursued. It is now proposed to deal with the special practice in detail. The prerogative of the Crown in matters of practice in general is dealt with hereafter in Book VI. of this work.

Abatement.

Informations do not abate on the demise of the Crown. By 1 Anne, c. 2 (1 Anne, st. 1, c. 8, Ruff.), s. 4, "No writ, plea, or process or any other proceeding upon any indictment or information for any offence or misdemeanour, or any writ, process, or proceeding for any debt or account that shall be due or to be made to Her Majesty, her heirs or successors, for or concerning any lands, tenements, or other revenue that shall belong to her or them, that shall be depending at the time of Her Majesty's demise (whom God long preserve), or of any of her heirs or successors, shall be discontinued or put without day by reason of her or any of their deaths or demises, but shall continue and remain in full force and virtue, to be proceeded upon notwithstanding any such death or demise."

The Act 4 & 5 Will. & Mar. c. 18, s. 7, saving defendants from the necessity of pleading again on the demise of the Crown, only relates to informations in the Crown Office.

See form of record in the Modern Practice of the Exchequer, p. 259.

As to abatement of an Irish writ of error on a *quare impedit* on the death of the King, see *Archbishop of Armagh v. A.-G.* (1728), 3 Bro. P. C. 507; and as to abatement on the death of the Lord Protector, see *Protector v. St. John* (1658), Hard. 136.

Proceedings under an extent or *diem clausit extremum* do not abate by the death of the extendee. (See *R. v. Wade* (1818), 5 Price, 628.)

In *A.-G. v. Buckley* (1698), Park. 264, the defendant to such an information died after trial and before judgment entered. The Court doubted whether death might be shown to the Court by affidavit, and, by consent, it was suggested upon the roll and confessed by the Attorney-General.

As to the effect of a change of Attorney-General during proceedings, see *Hamilton v. A.-G.* (1881), 7 L. R. Ir. 555; 9 L. R. Ir. 271.

It is expressly provided in Scotland by the Crown Suits (Scotland) Act, 1857 (20 & 21 Vict. c. 44), s. 5, that no proceedings by or against the Lord Advocate are to be affected by a change in the person holding the office.

Adjournment.

The Court or a judge is given power by the Common Law Procedure Act, 1854, s. 19 (p. 669), applied by sect. 31 of the Crown Suits, &c. Act, 1865, to adjourn a trial on such conditions as he

thinks fit. The similar provision in Ord. XXXVI. r. 34, does not apply.

As to adjournment *pro defectu juratorum*, see *A.-G. v. Hughes* (1816), 3 Price, 35. As to further adjournment on the defendant's application, where there has been delay between process and information, see *A.-G. v. Thacker* (1816), 2 Price, 116.

Affidavits.

Rules 118—122 (p. 771) must be read in conjunction with Ord. XXXVIII., applied by Ord. LXVIII. r. 2. Ord. XXXVIII. r. 7 corresponds exactly to Rule 118, and Ord. XXXVIII. r. 18 corresponds to Rule 119, except that it omits any mention of the King's Remembrancer. Add also the Common Law Procedure Act, 1854, s. 45 (p. 672), as to answering new matter contained in affidavits, applied by the Crown Suits, &c. Act, 1865, s. 31.

Amendment.

Ord. XXVIII. of the Rules of the Supreme Court is applied by Ord. LXII. r. 2, and apparently supersedes sects. 40, 41 of the Crown Suits, &c. Act, 1865 (p. 698), in respect of the matters with which they deal.

It is stated in Manning, Exch. Pr. (ed. 2), p. 222, on the authority of Brooke and Vyner, that the King may, during the same term, waive his count and declare *de novo*, even after plea or demurrer. *Sed quære*, whether a modern Court would look favourably upon this prerogative. It is, however, supported by *R. v. Delme* (1714), 10 Mod. 199, 200, where it is said: "The Crown may waive their demurrer, take issue, and waive that issue. The Queen may amend her pleadings at any time." (See further, below, p. 562.) In *A.-G. v. Henderson* (1786), 3 Anst. 714, it is stated that "upon inquiry the practice was found to be that the Attorney-General may at any time amend an information as of course." In that case the application was to add another count, and it appears that the Crown paid the costs.

So in *A.-G. v. Ray* (1843), 11 M. & W. 464; 12 L. J. Ex. 352, it was held that the Attorney-General was entitled to amend without a rule to show cause, and the Court granted a rule absolute in the first instance on payment of costs (since the Attorney-General had applied for and obtained a rule), in order that the granting of the rule might not be made a precedent.

In *A.-G. v. Smith* (1839), 5 M. & W. 372, the Attorney-General was allowed to amend an information *in rem* after plea pleaded by adding additional counts, although a recognisance had been entered

into by the bail to restore the goods and pay costs; but such recognisance had been entered into before the filing of the information.

See, generally, the discussion of amendment by the Crown in Book VI. of this work, p. 562.

Appeal.

Ord. LVIII. is applied by Ord. LXVIII. r. 2. This Order and the provisions of the Judicature Acts must be taken now to supersede the provisions of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 32, 36, 37, 39—43 (below, p. 671), which were applied by sects. 31, 35 of the Crown Suits, &c. Act, 1865 (below, pp. 696, 697). Consequently the provisions of Rules 91, 97—105 (pp. 767, 768), which deal with proceedings in error, must now be regarded as obsolete, together with the forms in Sched. C., Nos. 6—8, 11. Whether the time for appealing from a judgment on an information is fourteen days or three months, *quere*.

But apparently Ord. LVIII. r. 16, which provides that an appeal shall not operate as a stay of execution, does not supersede the express provisions of the Crown Suits, &c. Act, 1865, s. 32 (p. 691), which provides that a notice of appeal shall so operate, on certain conditions as to security, which do not apply to the Crown or the Inland Revenue Commissioners.

It would seem that the old principle that, where judgment had been given for the Crown, no writ of error could be brought without the consent of the Attorney-General on behalf of the King (*Anon.* (1574), Sav. 131; *R. v. M'Leod* (1816), 3 Price, 203, at p. 209), is no longer valid.

An information to recover penalties is not a "criminal cause or matter" within sect. 47 of the Supreme Court of Judicature Act, 1873 (compare *A.-G. v. Radloff* (1854), 10 Ex. 84; 23 L. J. Ex. 240), and therefore an appeal lies in respect of it, either (per Brett, M.R.) because it is in its nature a civil proceeding, or (per Lindley, L.J.) because an appeal lay in respect of it under the Crown Suits, &c. Act, 1865. (*A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667; 54 L. J. Q. B. 205.) See also above, p. 174.

Appearance.

To a writ of subpoena, Rules 4—9 and notes thereto, p. 754. See "Subpoena."

To a writ of capias, Rules 11—19, and notes thereto, p. 755. See "Capias."

To writs leading to informations of intrusion, Rules 25—32 (p. 758).

A writ of distringas is no longer necessary to compel the appear-

ance of a corporation, but a writ of subpœna or *scire facias* suffices. (Crown Suits, &c. Act, 1865, s. 36, p. 697.)

Attachment.

See Rules 41, 114, 116 (pp. 760, 770, 771). Rule 113, as to rules to return writs or bring in the body, appears to be superseded by Ord. LII. r. 11, applied by Ord. LXVIII. r. 2.

As to attachment for non-appearance to a writ of subpœna, see Manning, Exch. Pr. (ed. 2), p. 206. It is there stated that process of attachment cannot issue until the information is actually filed.

A motion for attachment will apparently be set down in manner provided for motions by Ord. LII.

As to the privilege of peers and members of Parliament, see pp. 146, 257.

Capias.

See also "Service," "Subpœna."

General rule as to issuing writs, Rule 1, p. 753.

The procedure is governed by Rules 10—20 (p. 755), and see the notes thereto, and, for fuller details, the Annual Practice, Vol. II. See also Ord. II. r. 8, applied by Ord. LXVIII. r. 2, and the Exchequer Court Act, 1842, s. 8 (p. 663). For form of writ, see the Rules, Sched. A., No. 4 (p. 777); for form of recognisance, Sched. C., No. 10 (p. 797), which must be amended to correspond with the terms of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 247 (p. 723).

By the last-cited section, "all suits, prosecutions, or informations for recovery of penalties under the Customs Acts in the High Court of Justice in England, or in any of Her Majesty's Courts of Record at Dublin or Edinburgh, may be commenced either by writ of subpœna or capias as the first process at the election of the Commissioners of Customs."

The Rules above referred to must be read in connection with and subject to the provisions of sects. 247—254 of the last-mentioned Act (set out below, p. 723), so far as proceedings by capias for penalties under the Customs Acts are concerned. It appears that if the Crown has not taken any effectual proceedings to bring the case to trial for three terms, a defendant who is under recognisance to appear and answer may obtain the discharge of his recognisance. (*A.-G. v. Bear* (1818), 6 Price, 83.)

As to what constitutes effectual proceedings, see *A.-G. v. French* (1819), 7 Price, 557. See also *Jenkins qui tam v. Horne* (1714), 2 Ld. Raym. 1311, and the passage in Fowler, Exch. Pr. (ed. 2), II. 33, cited below, p. 218.

Rule 41 (p. 760) provides that where the defendant is in custody on a *capias* or attachment for not appearing, the information, if not before filed, shall be filed and served within six weeks after his arrest; otherwise the defendant may apply for his discharge, on notice to the solicitor of the Department issuing the writ. It had already been decided in *A.-G. v. Reilly* (1843), 12 M. & W. 217; 13 L. J. Ex. 82, that the information need not be filed before the issue of the *capias*.

There is no provision for the commencement of proceedings by a *capias* in the Acts relating to the Inland Revenue.

Commission to examine Witnesses. See "Evidence."

Confession. See "Abatement," "Discontinuance," "Judgment."

Costs.

The whole question of the Crown's costs, both on the Revenue side of the King's Bench Division and elsewhere, is dealt with below, pp. 613, 618.

It should be specifically stated here, however, that by the Crown Suits Act, 1855, ss. 1 and 2 (printed below, p. 673), in any information, action, suit, or other legal proceedings instituted by or on behalf of the Crown in respect of any land or goods as therein mentioned, costs are to be given to or against the Crown as in a proceeding between subject and subject; and by the Queen's Remembrancer Act, 1859, s. 21 (below, p. 679), the costs of all suits, informations, and other proceedings on the Revenue side of the King's Bench Division, whether in law or equity, may be awarded between the Crown and the subject as in suits between subject and subject. By both sections, the Treasury are required to pay such costs, if awarded, out of moneys voted by Parliament for the purpose.

Ord. LXV., relating to costs, is made applicable by Ord. LXVIII. r. 2.

The provisions of this Order appear to supersede Rules 81—85 (p. 766), but Rule 86, which deals with a matter not covered by Ord. LXV., seems still to be in force, except that the certificate of the costs allowed will be given by the ordinary taxing officer. That Rule enables the Crown, on default of payment of costs awarded to it, to sue out a subpoena, and obtain a fiat for attachment on non-payment after service and demand.

Court and Judge.

See the Exchequer Court Act, 1842, s. 9 (p. 663), and the Crown Suits, &c. Act, 1865, s. 5 (4) (p. 692).

As to the transference of revenue matters to the Revenue side of the King's Bench Division, see below, p. 583.

Proceedings on the Revenue side of the King's Bench Division were formerly heard and determined by a Divisional Court under Ord. LIX. r. 1 (d), but that provision was annulled by R. S. C. July, 1901, r. 8, and such cases are now heard in the ordinary way by a single judge.

The general position and function of the Court of Exchequer is discussed in the introductory chapter of Price's Exchequer Practice; see also the Oath of the Barons, printed on p. 47 of the same work.

5 Vict. c. 5, s. 1 (repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), transferred the equity jurisdiction of the Court of Exchequer (other than such as it possessed as incident to it as a Court of law or as a Court of revenue, and not theretofore exercised or exercisable by it sitting as a Court of equity) to the Court of Chancery. This section was discussed in *A.-G. v. Halling* (1847), 15 M. & W. 687; 16 L. J. Ex. 303, an English information under the Customs Acts, where a valuable discussion of the position and functions of the Court of Exchequer, both as a Court of law and as a Court of equity, will be found. The decision differed from, and is to be preferred to, that in *A.-G. v. London Corporation* (1845), 8 Beav. 270; 14 L. J. Ch. 305, affirmed, on another ground, 1 H. L. C. 440; see *A.-G. v. Edmunds* (1868), L. R. 6 Eq. 381, 392; 37 L. J. Ch. 706. See also *A.-G. v. Kingston* (1842), 6 Jur. 155; and *A.-G. v. Evans* (1862), 5 L. T. 760.

Ord. LIV. r. 12, which gives a master all the powers, with specified exceptions, which might be exercised by a judge at chambers under the Judicature Acts and Rules, does not apply to the Revenue side of the King's Bench Division, and, therefore, it would seem that a master has no power to make orders in proceedings on the Revenue side, even in respect of such matters as fall under the orders applied by Ord. LXVIII. r. 2, and certainly not in respect of matters not within those orders.

Damages, Inquiry as to.

By Rule 92 (p. 767), where the Crown claims in respect of profits or unliquidated damages, and is entitled to sign judgment by default, either for non-appearance or otherwise, the judgment shall be interlocutory, except where the Crown elects to apply to the Court to impose a fine, and a writ of inquiry in Form No. 13 in Sched. A. (p. 783) may issue to assess the profits or damages.

Ten days' notice is to be given to the defendant, and final judgment is not to be signed until four days after the writ of inquiry

and inquisition has been filed, if the return of the writ is past; if not, four days after such return. A form of judgment is given on p. 788.

Directions, Summons for.

The provisions of Ord. XXX. as to this have no application to proceedings on the Revenue side of the King's Bench Division.

Discontinuance.

See Rule 123 (p. 771). Forms of satisfaction warrant and *nolle prosequi* are given in Sched. C., Nos. 9 and 14 respectively (pp. 797, 800). Forms of judgment in such cases will be found in the Modern Practice of the Exchequer, pp. 400, 403; and forms of confession by the Attorney-General on p. 256 of the last-named work.

The King could not be non-suited owing to his omnipresence (see above, p. 9), though an informer who sues *qui tam* could be (Bro. Abr. Nonsuit, 68), but the Attorney-General suing on the King's behalf may enter an *ulterius non vult prosequi*, which has the effect of a non-suit. (Co. Litt. 139 b.)

In *A.-G. v. Farnham* (1670), Hard. 504, on a *quo warranto*, it was moved in arrest of judgment that there had been a discontinuance, because there was no issue joined. "But the Chief Baron said they came too soon to urge that, because judgment was not yet given. And before judgment there is no discontinuance in the King's case. For the Attorney-General may yet proceed by the King's prerogative to take issues upon the rest, or may issue a *nolle prosequi*. And if he will not proceed the Court may make a rule upon him *ad replicandum*."

With this compare Fowler, Exch. Pr. (ed. 2), II. 33, where he refers to "the practice which prevails upon informations in revenue, for there, though the defendant's bail be discharged, if the Attorney-General does not proceed against him within a limited time, the information is still in force against the principal; and it was never known that the Attorney-General proceeded to recover the penalty against the principal after his bail was discharged."

On a *scire facias*, however, *R. v. Musters* (1744), Park. 50, where the defendant pleaded a title against the Crown, and the Attorney-General did not plead or demur in a reasonable time, the Court, while agreeing that the King could not be *non prossed*, thought it could give judgment for the defendant under the circumstances, "otherwise it would be of bad consequence to the subject, whose witnesses may die." But it thought the defendant should first apply to the Attorney-General to proceed, and, if he would not proceed, the Court

might give judgment for the defendant as if the Attorney-General had confessed the plea.

So in *A.-G. v. Richards* (1796), 3 Anst. 753, an information of seizure, issue was joined, and notice of trial given every term, but countermanded. The goods seized were suffering from the detention. On a motion for a writ of delivery without security on the ground of delay, the Court directed the application to be renewed after notice had been given to the Attorney-General. The application having been renewed, and no cause being shown by the Attorney-General, the Court granted it as being reasonable.

In *R. v. Solly* (1819), 6 Price, 480, a claim to goods seized under an extent, the Court observed that the last-cited case was a very strong case in terms, for the Attorney-General might at any time enter a *nolle prosequi*. They refused to give judgment as if the plea were confessed for the defendants on a motion for that purpose, where the Attorney-General had not demurred, replied, or otherwise proceeded, but apparently were willing to grant a writ of *amoveas manus*.

In *A.-G. v. Eyton* (1818), 6 Price, 85, an information to procure the sale of a deceased Crown debtor's copyholds, a motion that the defendant might go without day, where he had answered, but the Attorney-General had not replied or otherwise proceeded for three terms, was adjourned in order that a search might be made for precedents. Such an application was stated to have been granted in *A.-G. v. Cochrane*, not reported.

In *R. v. Slee* (1825), M'Cle. & Y. 361, a claim under an extent, the Court would not order the Attorney-General to reply without a previous application to him for a reply. See West on Extents, 213.

Peto v. A.-G. (1827), 1 Y. & J. 509, was a bill in the Exchequer against the Attorney-General, and the Court ordered that, unless he put in his answer within a week, the bill be set down to be taken *pro confesso*, saying that the privilege of the Attorney-General was sought to be made use of for accomplishing that which could not be done between party and party.

In *R. v. Ray* (1842), 9 M. & W. 760; 11 L. J. Ex. 317, an information on breaches of covenants, the Court said that it "could not supersede the prerogative of the Crown," and discharged a rule to show cause why the defendants should not be at liberty to set down the cause for trial in the next sittings.

Discovery.

See "Evidence" and the general article on discovery below, p. 598.

On the trial of an information for penalties under the Customs Acts, it was held that the defendant was entitled to the production on

his subpoena by an officer of the King's Remembrancer's Office of an affidavit sworn by one of the Crown witnesses, on which the defendant had been held to bail, for the purpose of cross-examining such witness (*A.-G. v. Bond* (1839), 9 C. & P. 189).

Evidence.

See also "Affidavits."

As to notices to produce and admit documents, see Rules 76, 77 (p. 765), which apply sects. 117—119 of the Common Law Procedure Act, 1852 (p. 677), and Rules 29 and 30 of Hilary Term, 1853 (p. 750). As to the return of depositions, see Rule 78 (p. 765).

The Crown Suits, &c. Act, 1865, s. 34, applies sects. 2, 3 of the Evidence Act, 1851 (14 & 15 Vict. c. 99), and the whole of the Evidence Amendment Act, 1853 (16 & 17 Vict. c. 83) (below, pp. 665, 668), to proceedings at law on the Revenue side of the King's Bench Division, with the provision that no such proceeding shall be deemed to be a criminal proceeding within the meaning of the sections and Act so applied. These provisions refer to the admissibility and compellability of witnesses, and permit the defendant to be called, thus overriding the decisions in *A.-G. v. Radloff* (1854), 10 Ex. 84; 23 L. J. Ex. 240; and *R. v. Sheil* (1858), 1 F. & F. 204.

Sects. 20—31 of the Common Law Procedure Act, 1854 (p. 669), are applied by sect. 35 of the Crown Suits, &c. Act, 1865, through the medium of sect. 103 of the Common Law Procedure Act, 1854. These sections relate to affirmations, oral evidence, stamps, &c.

As to evidence in proceedings under the Customs Acts, see Customs Consolidation Act, 1876, ss. 259—263 (p. 726); under the Acts relating to Inland Revenue, see the Inland Revenue Regulation Act, 1890, s. 24 (p. 741).

For certain details of evidence, which do not seem of sufficient present importance to be set out here, the reader is referred to Manning, Exch. Pr. (ed. 2), p. 226. The defendant may be given notice to appear at the trial for the purpose of identification (*A.-G. v. Renton* (1819), Manning, *ubi sup.*), and a *habeas corpus* will be granted to bring him up at his own expense, if he relies upon a mistake in identity. (*A.-G. v. Fadden* (1815), 1 Price, 403.)

In a revenue information by the Attorney-General, a witness for the Crown cannot be asked in cross-examination questions with the object of discovering either if he himself or if a third person was the informer. (*A.-G. v. Briant* (1846), 15 M. & W. 169; 15 L. J. Ex. 265.)

In *A.-G. v. Boret* (1846), 15 M. & W. 60; 15 L. J. Ex. 155, an information for penalties, the Court held that, on a motion by the defendant, it had no jurisdiction, either at common law or by statute, to

direct a commission to issue for the examination of witnesses abroad; nor would it stay proceedings until the Attorney-General consented to the issuing of such commission. A similar decision was given in *R. v. Wood* (1841), 7 M. & W. 571; 10 L. J. Ex. 168 (a *scire facias* on a bond), and it was held in both cases that the Evidence on Commission Act, 1831 (1 Will. IV. c. 22), did not apply. The case of *Laragoity v. A.-G.* (1816), 2 Price, 166, 172, was distinguished on the ground that there, on an information of seizure, the applicant, having failed in his application at common law for a commission, proceeded to file a bill under the equity jurisdiction of the Court and succeeded.

But in *R. v. Douglas* (1842), 2 Dowl. (N. S.) 416, the Attorney-General obtained a rule for a mandamus to examine witnesses in India in a prosecution under the East India Company Act, 1793 (33 Geo. III. c. 52), s. 62, on his mere statement of the necessity.

In *A.-G. v. Reilly* (1845), 13 M. & W. 676; 13 L. J. Ex. 82, an information for penalties, the Attorney-General was given leave to examine a material witness for the Crown, who was too ill to attend the Court, on interrogatories before the Queen's Remembrancer, but the Court would not make it part of the rule that his examination should necessarily be received as evidence on the trial.

It has been held (*A.-G. v. Bowman* (1721), 2 B. & P. 532, n.) that evidence of general character is not admissible on an information for penalties, and Eyre, C.B., said: "In a direct prosecution for a crime such evidence is admissible, but where the prosecution is not directly for the crime but for the penalty, as in this information, it is not."

It has also been held that the evidence of a witness, who has remained after all witnesses had been ordered to leave the Court, cannot be admitted in Revenue cases (*A.-G. v. Bulpit* (1821), 9 Price, 4); and in *Parker v. M'William* (1830), 6 Bing. 683; 8 L. J. (O.S.) C. P. 276, it is particularly stated that though in other Courts the admission of such evidence is in the discretion of the judge, it is not admissible at all in the Exchequer, in order "to exclude any imputation of unfairness in proceedings between the Crown and the subject."

In *Thomas v. David* (1836), 7 C. & P. 350, it is more explicitly stated that this rule in the Exchequer is confined to Revenue cases.

In Ireland it was stated in *A.-G. v. Sullivan* (1842), Arms. M. & O. 294, that there is no such inflexible rule, and a witness was allowed to give evidence under such circumstances.

Execution.

See Rules 88—90 (p. 766), and 93—96, with notes thereto (p. 767), and the Crown Suits, &c. Act, 1865, s. 50, and the Crown Debtors Act,

1785, thereby applied (p. 700). As to execution on estreats, see Rule 112 and Sched. A., Form 11 (pp. 770, 782).

Sect. 24 of the Queen's Remembrancer Act, 1859 (p. 680), provides for the recovery of a debt of record due to the Crown, where the person or estate of the debtor is in Scotland or Ireland. Similar provisions are contained in the Inland Revenue Regulation Act, 1890, s. 23 (p. 740). See, further, the Crown Debts Act, 1801 (41 Geo. III. c. 90). The provisions of the Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), would appear not to apply to the Crown.

As to the exemplification of records under the above and other provisions, see Rule 131 (p. 773).

In default of payment of a judgment for penalties under the Customs Acts, execution may issue against the defendant's body and all his property. (Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 4.)

By 33 Hen. VIII. c. 39, s. 51 (p. 660), the King is to have the first execution for his debt before any other person, if his suit be commenced before judgment has been given for such other person. The question of the Crown's priority in execution is dealt with above, p. 162.

Fees.

By the Order as to Supreme Court Fees of 1884, r. 2, the provisions thereof are not to affect the existing fees and percentages in respect of matters on the Revenue side of the King's Bench Division, and proceedings and business in the office of the King's Remembrancer, other than such matters, proceedings and business as the scale contained in the schedule thereto may be applicable to.

Hearing. See "Trial."

Information.

As to the various species of information, see above, pp. 170 *sqq.*, and the precedents printed below, pp. 261 *sqq.*

As to printing, &c., see Ord. LXVI., applied by Ord. LXVIII. r. 2.

As to filing, see Rules 40, 41, and notes thereto (p. 759). The information, when filed, must be on parchment, and must be delivered or filed within twelve months after the service or execution of process, or, if the defendant is in custody, within six weeks after his arrest. On default, in the latter case, the defendant may apply to a judge for his discharge; in the former case, the Crown shall, unless otherwise ordered by the Court or a judge, be deemed out of Court.

As to title and entering-up of informations, see Rule 64 (p. 764).

In framing informations under the Customs Acts, it will be useful

to examine the forms of counts for summary informations contained in Sched. C: to the Customs Consolidation Act, 1876 (p. 729). See *A.-G. v. Henley* (1858), 8 Ir. C. L. R. 267.

Judgment.

See also "Damages, Inquiry as to."

Rules 87—90 (p. 766) provide for the signing and entering of judgments.

As to judgments on informations of intrusion, see above, p. 183, and Rules 29, 32, 34, 36, 38 (pp. 758, 759).

As to judgment in default of appearance to a writ of subpœna, see Rules 5—8 (p. 754); to a writ of capias, Rule 12 (p. 755), and the Customs Consolidation Act, 1876, s. 249 (p. 724); in default of pleading, Rule 90 (p. 767); on withdrawal of plea and confession, Rule 79 (p. 765).

Sched. B. to the Rules (p. 784), contains various forms of judgments, and a large number of other forms will be found in the *Modern Practice of the Exchequer*, pp. 265—283, 387—404, and in *Howard, Exchequer and Revenue*, II., 329, 330.

A judgment condemning goods changes the property in them, and is conclusive, and the proprietor cannot bring an action of trespass or trover against the seisor. (*Ekins v. Smith* (1680), T. Raym. 336; *Scott v. Shearman* (1775), 2 W. Bl. 977; *Geyer v. Aguilar* (1798), 7 T. R. 681, 696; *Anon.* (1716), Vyn. Abr. Evidence, A. b. 22. But it seems to be doubtful whether a record of condemnation of goods seized for an act of forfeiture is conclusive evidence of the facts stated therein so as to affect the defendant collaterally in any other proceeding against him for penalties for the act of forfeiture. It is not evidence on a charge of an offence against the same party, with respect to the same goods, created by another statute. (*A.-G. v. King* (1817), 5 Price, 195.) See also *Cooke v. Sholl* (1793), 5 T. R. 255; *Bill v. Robinson* (1719), Bunb. 49; *Hill v. Clifford*, [1907] 2 Ch. 236; 76 L. J. Ch. 627, and *Taylor on Evidence* (ed. 10), ss. 1676 *sqq.*, 1722.

By sect. 2 of the Land Charges Act, 1900 (63 & 64 Vict. c. 26), which replaces sects. 48, 49 of the Crown Suits, &c. Act, 1865, it is provided that "(1) a judgment or recognisance, whether entered into on behalf of the Crown or otherwise; and whether obtained or entered into before or after the commencement of this Act, shall not operate as a charge on land, or on any interest in land, or on the unpaid purchase money for any land, unless or until a writ or order for the purpose of enforcing it is registered under section five of the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51).

"(2) This section shall apply to any inquisition finding a debt due

to the Crown, and any obligation or specialty made to the Crown, and any acceptance of office from or under the Crown, whatever may have been its date, in like manner as it applies to a judgment.

“(3) Except under an order of the High Court, no entry shall be made in any register kept under sections nineteen and twenty-one of the Judgments Act, 1838 (1 & 2 Vict. c. 110), section eight of the Judgments Act, 1839 (2 & 3 Vict. c. 11), the Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), the Judgments Act, 1864 (27 & 28 Vict. c. 112), or the Crown Suits, &c. Act, 1865 (28 & 29 Vict. c. 104).”

The Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 22 (which does not extend to Scotland or Ireland), applies the provisions as to the re-registration of judgments, &c. contained in the Judgments Act, 1839 (2 & 3 Vict. c. 11), as amended by the Judgments Act, 1855 (18 & 19 Vict. c. 15), to the Crown.

Jury.

See also “Verdict.”

Rule 75 (p. 765) applies sects. 104—115 of the Common Law Procedure Act, 1852 (p. 665), and Rules 44—49 of Hilary Term, 1853 (p. 751).

The subsequent provisions of the Juries Act, 1870 (33 & 34 Vict. c. 77), however, appear to apply to the Revenue side of the King’s Bench Division, and must be read with the provisions of the Common Law Procedure Act, 1852, and the Rules of 1853, so applied, together with other general Acts with regard to juries which are applicable, such as the Juries Act, 1825 (6 Geo. IV. c. 50), ss. 30—33, as to special juries.

The Crown Suits, &c. Act, 1865, s. 31, also expressly applies sect. 59 of the Common Law Procedure Act, 1854, as to rules or orders for summoning a jury.

By Rule 125 (p. 772) *tales* may be prayed (see the Juries Act, 1825, s. 57) on behalf of the Crown, without any warrant for that purpose. (See *A.-G. v. Parsons* (1836), 2 M. & W. 23; 5 L. J. Ex. 243.)

It is provided by 18 Eliz. c. 5, s. 2, that no jury shall be compelled to appear at Westminster for the trial of any issue in a suit upon a penal statute for any offence committed above thirty miles from Westminster, except where the Attorney-General, for some reasonable cause in that behalf to be shown, requires the same to be tried at bar at Westminster, and his request is to be noted on the back of the *distringas* thereupon awarded, in order that the sheriff or bailiff may signify the same to the jury.

King's Remembrancer's Department.

The Senior Master of the Supreme Court is now King's Remembrancer. See notes to sects. 1—5 of the Queen's Remembrancer Act, 1859, p. 676.

By Ord. LXI. r. 1, the King's Remembrancer's Office became the King's Remembrancer's Department of the Central Office, and by r. 1A it was amalgamated with the Judgments and Married Women's Acknowledgments Department, and became the King's Remembrancer's, Judgments, and Acknowledgments Department of the Central Office, and is subject to the rules made to govern the business in the Central Office.

Rule 138 (p. 773) is therefore superseded by the provisions of Ord. LXXIII. As to the making of appointments by the King's Remembrancer, see Rule 139, p. 774.

As to enrolment, see Rule 145 (p. 774), which must be read with Ord. LXI. r. 9.

Limitation of Time.

See the general article on this subject, below, p. 566.

Motions and other Applications.

Ord. LII., relating to these matters, is applied by Ord. LXVIII. r. 2.

New Trial.

Ord. XXXIX., relating to new trials, is not applied to the Revenue side of the King's Bench Division. Consequently, it would appear that in this matter the procedure is still governed by sects. 31, 34, 35, 44 of the Common Law Procedure Act, 1854 (pp. 671, 672), applied by sects. 31, 35 of the Crown Suits, &c. Act, 1865, and by Rules 108, 109 (p. 770).

For a motion for a new trial, see *A.-G. v. Bulpit* (1821), 9 Price, 4.

In actions against officers for seizure without reasonable cause new trials were granted, in one case for non-admission of evidence, in another in spite of a special verdict signed by counsel on both sides, and in a third because the jury had tossed up whether they should give the plaintiff 300*l.* or 500*l.* damages. (*Bill v. Robinson* (1719), Bunb. 49; *Namink v. Farwell* (1719), Bunb. 51; *Mellish v. Arnold* (1719), Bunb. 51.)

Nolle Prosequi. See "Discontinuance."

Non-compliance with the Rules, Effect of.

Ord. LXX., which deals with this matter, is applied by Ord. LXVIII. r. 2. Rule 1 refers to "non-compliance with any of these rules [*i.e.*, the R. S. C.] or with any rule of practice for the time being in force." Consequently, it would seem that it covers non-compliance with the Rules of 1860 and 1861 as well as non-compliance with so much of the R. S. C. as is applied to the Revenue side of the King's Bench Division. Similarly, Rules 2, 3 and 4 refer to "any proceeding."

Notices, Printing, Copies, &c.

See Ord. LXVI., applied by Ord. LXVIII. r. 2, and Rule 122.

Particulars.

For an application for particulars by the defendant against the Attorney-General, see *A.-G. v. Lambirth* (1818), 5 Price, 386.

Parties.

By sect. 5 of the Crown Suits, &c. Act, 1865 (p. 692), the provisions of the Act apply to the Solicitor-General, when a vacancy in the office of Attorney-General or other occasion so requires, and also to the Attorney-General of the Prince of Wales and Duke of Cornwall, and they apply to the Duchy of Lancaster, and to the King in right of that Duchy, when the case so requires. It is also provided by Rule 140 (p. 774), that the Rules, so far as applicable, apply to proceedings at the instance of the Attorney-General of the Prince of Wales or the Duke of Cornwall for the time being.

As to informations by the Attorney-General of the Duchy of Lancaster and the Attorney-General of the Prince of Wales, see above, pp. 7, 16.

See also the articles on the Attorney-General and the Solicitor-General, above, pp. 9, 14.

Pauper.

Ord. XVI. rr. 22—31 do not apply to the Revenue side of the King's Bench Division, but it is provided in the Customs Consolidation Act, 1876, s. 251 (p. 725), that a person arrested and imprisoned by virtue of a writ of *capias* may proceed *in formâ pauperis* on satisfying the Court by an affidavit verifying his disability. See *A.-G. v. Dummie* (1834), 2 Cr. & M. 393; 3 L. J. Ex. 86, decided on the similar, but now repealed, sect. 97 of 3 & 4 Will. IV. c. 53.

Payment into and out of Court.

Rules 132—134 (p. 773) provide for the application at the King's Remembrancer's Department for a direction to be taken to the Bank of England at the time of payment in, and for the filing of the receipt at the King's Remembrancer's Department. An order of the Court or a judge must be obtained, upon notice to the opposite party, if money is to be invested, paid out, or otherwise disposed of.

Pleading.

General Observations.

A general article on pleading in proceedings by the Crown will be found below, p. 561.

See also "Information," "Time," the precedents printed below, pp. 261 *sqq.*, and the forms in the Modern Practice of the Exchequer, pp. 349 *sqq.*

Pleadings on informations of *devenerunt* and informations of intrusion are dealt with specially above, at pp. 176, 179 *sqq.* respectively.

The Rules governing the matter are Rules 58—64 (p. 763).

As to the non-necessity of delivering a copy issue, see Rule 73 and note thereto (p. 765).

The title of pleadings is now in practice as follows:—

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

There appears to be no authority save custom for the addition of the words "(King's Remembrancer)," but it is a convenient method of distinguishing proceedings on the Revenue side of the Division.

In an information of forfeiture, the plea generally consists of a simple traverse or denial of the respective causes of forfeiture alleged in the information. (Manning, Exch. Pr. (ed. 2), p. 175.) But see the precedent below, p. 264. This latter form is stated by Manning not to have been adopted to his knowledge (p. 219); according to him, each count alleging a cause of forfeiture ought to be traversed separately; but the summary form has before now been adopted, and there seems to be no objection to it.

There would seem to be no objection to a plea of not guilty or not indebted to such part of an information as is suitably covered by such a plea, together with special traverses of the parts, if any, to which such a plea is not appropriate.

The defendant apparently can plead, in a proper case, *auterfois convict* or *auterfois acquit*, or the pendency of another information for the same matter (Manning, p. 219); but these must be specially

pleaded, and cannot be given in evidence under the general issue (so *A.-G. v. Hayler* (1816), not reported, as to *auterfois convict*, but the principle seems to apply to all three cases), except on informations falling within 21 Jac. I. c. 4, which is referred to below.

That the proceedings are out of time may be objected on a plea of the general issue, according to Manning (p. 220), who bases his view on his interpretation of *A.-G. v. Brown* (1801), Forr. 110.

As to making up the record of *nisi prius*, see Rules 52, 73, 125 (pp. 762, 765, 772), and Sched. C., Nos. 1—4 (p. 795).

Pleading the General Issue.

By 21 Jac. I. c. 4, s. 4, "If any information, suit or action shall be brought or exhibited against any person or persons, for any offence committed or to be committed against the form of any penal law, either by or on behalf of the King, or by any other, or on behalf of the King and any other, it shall be lawful for such defendants to plead the general issue, that they are not guilty or that they owe nothing, and to give such special matter in evidence to the jury that shall try the case, which matter being pleaded, had been a good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the said matters shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar, or discharge of such information, suit or action." Sect. 5 of the Act excepts certain informations, the only presently important one of which is "for or concerning the concealing or defrauding the King, his heirs or successors, of any custom, tonnage, poundage, subsidy, impost or prisage," but it is apprehended that this exception refers only to venue and not to pleading. See, further, the article on venue, below, p. 583. As to pleading the general issue on informations of intrusion, see above, p. 180; and see the precedents of such pleas to Revenue and other informations, below, p. 263. Manning, Exch. Pr. (ed. 2), p. 218, states that the exception of Revenue informations from 21 Jac. I. c. 4, covers pleading as well as venue. Whether that be so or not, at any rate it has recently always been the practice to plead "not guilty" or "not indebted" to Revenue informations and informations for penalties. As to relying upon *auterfois convict* or *acquitted* and limitation of time, under a plea of the general issue, see above.

Counterclaim.

The defendant to an information is not permitted to counterclaim. Any claim he has must be made by petition of right (see *Secretary of State for War v. Easdale* (1893), 27 I. L. T. R. 70),

the hearing of which may be consolidated with that of the information. Actions by the Attorney-General in the Chancery Division (see below, p. 464), stand on a different footing, and a counterclaim would be permitted. Compare what is said below, p. 386, as to counterclaims to petitions of right.

Recognisances.

See Rules 68—72, and notes thereto (p. 764). For forms, see Sched. C. to the Rules, Nos. 10—13, and notes thereto (p. 797), and also the *Modern Practice of the Exchequer*, pp. 203 *sqq.*

As to pleadings to estreated recognisances, see Rules 110, 111 (p. 770); and as to execution therein, Rule 112 and the form in Sched. A., No. 11 (pp. 770, 782). See also the chapter on *Scire Facias*, above, p. 208.

As to the issue of process on estreats without reference to any seal day, see the Queen's Remembrancer Act, 1859, s. 23 (p. 680).

As to the registration of recognisances so as to operate as a charge on land, see the Land Charges Act, 1900, s. 2, set out above, p. 223.

Seizure, Proceedings on.

See the provisions of the Customs Consolidation Act, 1876, ss. 218 *sqq.*, and the Inland Revenue Regulation Act, 1890, ss. 21 *sqq.*, set out below, pp. 716, 740, and the dissertation on costs, p. 618. Rules 51—53, 106, 107, of 1860, and a Rule of 1861 (pp. 761, 769, 800), deal with the procedure under writs of appraisement, claims, judgments of recovery and writs of delivery. For forms, see Sched. C., Nos. 1, 12 (pp. 795, 799). For the general practice the reader is referred to Manning, *Exch. Pr.* (ed. 2), pp. 142—165, 167—183 (it being remembered that the statutes therein cited, viz., 6 Geo. IV. c. 108; 24 Geo. III. sess. 2, c. 47; 13 & 14 Car. II. c. 11; 3 Geo. III. c. 22; 6 Geo. I. c. 21; 8 Ann. c. 7 and others, have been repealed, and their place taken by the statutory provisions referred to above), and to the *Annual Practice*, Vol. II.

Forms of writs, &c. are given in the *Modern Practice of the Exchequer*, pp. 216 *sqq.*; forms of judgment will be found in the Rules, Sched. B., pp. 790, 791.

Service.

See also "Capias," "Subpœna."

As to service in the case of informations of intrusion, see Rule 24, p. 757.

Provisions as to service out of the jurisdiction are contained in

sects. 37—42 of the Crown Suits, &c. Act, 1865 (p. 697), and forms of writs are given in Sched. II. to that Act (p. 705).

As to service on a corporation aggregate, sect. 36 of the Crown Suits, &c. Act, 1865 (p. 697), which abolishes the necessity of a distringas, provides for service on an officer of the corporation, and places a corporation in the same position as an individual defendant, appears to supersede Rule 39 (p. 759).

Rules 114—117 (p. 770) relate to the service of orders, &c. Rule 117 is dealt with under "Time." The showing of the original or an office copy of a rule or order is not necessary to regular service, unless demanded, except in cases of attachment. The service of a copy of the rule or order under the seal of the office, or the copy of an office copy of such rule or order, is sufficient to ground an application for an attachment or other writ.

An affidavit of service on a brother or other relative of the person to be served must state that he is "resident with and a relative of" such person.

Special Case.

See the Queen's Remembrancer Act, 1859, s. 15 (p. 678), and the Crown Suits, &c. Act, 1865, s. 58 (p. 703), as to special cases in summary proceedings to recover death duties. Ord. XXXIV. is now applied, by Ord. LXVIII. r. 2, to all proceedings on the Revenue side of the King's Bench Division. This Order covers special cases and the trial of issues of fact without pleadings. It would appear, however, that Rules 135, 136 (p. 773), which provide for the setting down of special cases at the King's Remembrancer's Department four clear days before hearing, with notice to the other party, and the delivery of copies for the Court and the opposite party, are still in force.

The practice was that the writ of subpœna or capias should first issue, and that the judge's leave to state a special case should be obtained in the presence of both parties. This matter is now, apparently, covered by Ord. XXXIV. r. 1.

For instances of special cases stated on informations, see *A.-G. v. Great Southern and Western Rail. Co.* (1863), 14 Ir. C. L. R. 447; *A.-G. v. Moore* (1878), 3 Ex. D. 276; 47 L. J. M. C. 103; *A.-G. v. Sutcliffe*, [1907] 2 K. B. 997; 76 L. J. K. B. 991; *A.-G. v. Yorkshire (Woollen District) Electric Tramways, Ltd.*, [1907] 2 K. B. 991; 77 L. J. K. B. 33.

Subpœna.

See also "Service."

General rule as to issuing writs, Rule 1, p. 753.

Rules for proceeding by *subpœna ad respondendum*, Rules 2—9

(p. 753), and notes thereto; in the case of informations of intrusion, Rules 22, 23, 37 (pp. 757, 759). As to renewal, see Rule 2.

Ordinary form of writ, Sched. A., No. 1 (p. 775); and precedent printed at p. 260.

As to practice, and forms of writ and of notice for service out of the jurisdiction, Crown Suits, &c. Act, 1865, ss. 37—42, and Sched. II. (pp. 697, 705).

Ord. II. r. 8, as to the testing and dating of writs, is applied to the Revenue side of the King's Bench Division by Ord. LXVIII. r. 2A.

As to the issue of writs in vacation, see the Exchequer Court Act, 1842, s. 8 (p. 663).

As to proceedings by subpœna or capias under the Customs Acts, see "Capias."

A writ of subpœna may be issued to a corporation. (Crown Suits, &c. Act, 1865, s. 36 (p. 697).)

In proceedings for penalties under the Customs Acts, sect. 248 of the Customs Consolidation Act, 1876 (p. 724), specially provides that, if the Commissioners waive the right of issuing a writ of capias and elect to proceed by subpœna, it shall be sufficient service if they serve a copy on the defendant personally, or leave it at his last known place of abode or business anywhere in the United Kingdom, or on board any ship or vessel to which he belongs or has lately belonged.

As to Inland Revenue proceedings, see the Inland Revenue Regulation Act, 1890, s. 23 (p. 740).

Time.

Ord. LXIV. is applied, so far as applicable, by Ord. LXVIII. r. 2, but it is apprehended that it does not supersede Rules 41, 58—64, 67, 117 (pp. 760, 763, 764, 771), in so far as the latter deal with matters not expressly dealt with in Ord. LXIV. Thus, the time for pleading, unless otherwise ordered, is still fourteen days (Rule 59), and the provisions as to extension of time (Rules 59, 60) still apply, but extension of time may now also be obtained by consent in writing. (Ord. LXIV. r. 8.) With Rules 61, 62, 63, as to the periods of the year within which proceedings may be taken, and the method of computing time, compare Ord. LXIV. rr. 2—5, 12, to which Rules 61, 62, 63 should be preferred in case of difference. Rule 67, which provides that notice shall be given of intention to proceed if no proceeding has been had for one year, is substantially identical with Ord. LXIV. r. 13. Rule 117, dealing with the time of day at which pleadings, notices, &c. may be served, must be taken to be superseded by Ord. LXIV. r. 11, *i.e.*, 6 p.m. is substituted for 7 p.m. on week-days other than Saturday.

As to certain proceedings permitted in vacation, see the Exchequer Court Act, 1842, s. 8 (p. 663), and as to the making of orders by a single judge out of Court, see sect. 9 of the same Act. The doctrine of law is said to be that the Court is always presumed to be sitting on the Revenue side of the Exchequer, now the King's Bench Division. (*R. v. Morse* (1848), 3 Ex. 223.)

By Rules 135, 136 (p. 773), all special verdicts, special cases, demurrers and petitions are to be set down for argument at the King's Remembrancer's Department four clear days before the hearing, and notice given forthwith to the other party, and at the same time copies are to be delivered for the Court and the other party.

Time for notice of trial and countermand, Rule 74 (p. 765); for signing judgment and issuing execution, Rules 12, 88, 90 (pp. 755, 766); for writ of inquiry and final judgment, Rule 92 (p. 767).

Trial.

See also "Evidence"; "Time."

As to setting down for argument, see Rules 135—137 (p. 773).

It is said that the Attorney-General and the prosecutor, or either of them, may countermand their notice of trial as often as they please. (Manning, Exch. Pr. (ed. 2), p. 221.)

The rights of the Crown in the matter of precedence in and at the hearing of Revenue matters are dealt with in the article on the Attorney-General, above, pp. 10, 11, and below, p. 586.

Only one counsel on each side would be heard on special cases in the Exchequer. (*Lord Eglinton's Trustees v. Commrs. of Inland Revenue* (1865), 13 W. R. 902; *In re Hastie* (1869), 18 W. R. 72.)

By 33 Hen. VIII. c. 39, s. 51, any suit commenced or process awarded for the King for the recovery of any debt of the King is to be preferred before the suit of any other person.

Trial at Bar.

This matter is fully discussed below, p. 587. Rule 130 (p. 772) provides that the pleadings are to be filed at the King's Remembrancer's Department for the purpose of being enrolled, and that the trial shall take place on the roll.

Venue.

See the general article on the subject, below, p. 581, and the special provision of the Queen's Remembrancer Act, 1859, s. 17 (p. 678), as to the trial on circuit of cases on the Revenue side of the King's Bench Division, without a commission.

Verdict.

See also "Jury."

By Rule 74 (p. 765), the associate in all cases at *nisi prius* is to take the verdict.

"In proceedings to recover penalties, where the amount is fixed by statute, the plea being in general not guilty, or a simple traverse, the inquiry with which the jury are charged is necessarily confined to the simple fact of the commission or non-commission by the defendant of the offences charged in the information; but where the amount of the penalty depends upon the value of the goods, in respect of which the offence was committed, that value must be specially found." (Manning, Exch. Pr. (ed. 2), p. 228.) So in cases of debts or duties found to be due to the Crown, the jury, of course, must find the amount.

Where the jury finds a sum due under a statute which gives multiple duties or penalties, that sum is to be considered as the single sum which is to be doubled by the statute. (*A.-G. v. Hatton* (1824), 13 Price, 476, and see above, p. 174.)

For special verdicts, see, on an information of debt, *A.-G. v. Perry* (1734), 2 Com. 481, and on an information of *decenerunt*, *R. v. Manning* (1739), 2 Com. 616.

It was held in *Bill v. Robinson* (1719), Bunb. 49, that an informer, when defendant in an action for seizure without probable cause, was entitled to go into the evidence given in the proceedings on the information, which resulted in a verdict for the defendant and present plaintiff, and that this would not amount to arraigning the verdict given on the information, for there was a wide difference between legal cause and probable cause.

Writ.

See "Capias," "Subpœna," Rules 1, 141, 144 (pp. 753, 774), and Ord. II. r. 8, applied by Ord. LXVIII. r. 2A.

As to writs of summons for the recovery of death duties, see above, p. 186.

As to the issue of process in vacation, see the Exchequer Court Act, 1842, s. 8 (p. 663).

Part III.

Proceedings in Equity on the Revenue Side of the King's Bench Division.

CHAPTER I.

ENGLISH INFORMATIONS.

The Nature of English Informations.

THERE is an unfortunately-worded paragraph in Fowler's Exchequer Practice (ed. 2), I. 103, which has misled several subsequent writers. One would conclude from it that all informations were English informations except such as were founded on penal statutes, whereas no informations are English, except informations on the Equity side of the Exchequer, now informations in equity on the Revenue side of the King's Bench Division.

The English, or equity, information in the Exchequer was probably introduced by the Crown, at first, in order to withdraw its claim from the common law and the cognisance of a jury, and, later on, to evade the provisions of 21 Jac. I. c. 14, to which full reference is made above, p. 180. The Crown's advisers seem to have argued that that statute only applied to proceedings at law and not to proceedings in equity, and the subject appears to have accepted that argument. Legitimately used, the English information is a valuable instrument to enable the Crown to obtain an account or other equitable relief from public servants or other persons, as will be seen in the precedents set forth hereafter; but there can be no doubt that its employment can be, and has been, very much abused from time to time, particularly in the case of claims to foreshore or other lands, the purpose for which it has been most frequently used. The hardships arise from its inquisitorial nature. On the filing of the information, it, or part of it, is usually put into the form of interrogatories which are served on the defendant at the same time as the information, and he is compelled to answer these on oath, under dire pains and penalties. He is thereby forced to disclose his title and his case, and the Crown may then, on the material so furnished to it, amend its information, administer a fresh set of interrogatories, and so on *ad*

infinitum. If the process is continued long enough, the defendant's witnesses may disappear, and his resources may become exhausted. There have been several extreme instances of such procedure on the part of the Crown, and from time to time the grievance has been strongly ventilated, but the process by English information still survives, and is still governed by the Rules made in pursuance of the Crown Suits, &c. Act, 1865. If the Crown chooses, however, it can, of course, proceed at law by information of intrusion or by an action in the Chancery Division.

The objections which have been taken to the procedure by equity information, where the claim was one which could be enforced at law, are well set forth in the dissenting judgment of Wood, B., in *A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167, at p. 184: "This is an information and bill of complaint in a Court of equity, and the ground of foundation of it is (as suggested) that the Prince and his lessee are remediless at the common law, and cannot obtain relief therein without the assistance of this Court, viz., the Equity Court of Exchequer. Is that so? I take it to be clearly otherwise; their respective rights are legal rights, or they have none at all; their respective claims are legal claims, and nothing else. . . . Whether any of these rights are barred by the Statute of Limitations or otherwise is a pure question of law; and there are no equitable circumstances, stated in this information and bill, to draw this case from the cognizance of a Court of common law into a Court of equity; whether the premises, which the defendants are alleged to be in possession of, are within the Manor of Trematon, or Sir John St. Aubyn's Manor of Stoke Damerel, is also a pure question of fact, triable by a jury, in a Court of common law, in which I include the law side of this Court. I take it to be a clear and settled principle of a Court of equity, that you shall not have relief in equity where you have a legal remedy, or at least, not until the right has been established in a Court of law." He then argues that the manifest meaning of 21 Jac. I. c. 14 was that all Crown informations for the recovery of land were common law informations of intrusion and nothing else, and discusses many instances just before and just after that Act, concluding (p. 216): "If you can supersede all these modes, by reviving this proceeding by English bill; if you can substitute deposition, instead of trial by jury; if you can make men set out their title upon oath, and wring their deeds from them for your inspection; all those safeguards which our forefathers have been at all times so anxious to obtain and preserve, and which are so effectual to the security of the subject, will be broken down and destroyed (p. 223) I am aware that it may be said that the

Court, if they see any doubt, when the evidence is taken upon depositions, may send it to law to be tried: most undoubtedly they may; but I have no doubt that those, who so argue, will also argue, that it is in the discretion of the Court, whether they will or will not send it to law, and would in fact most strenuously oppose it. In my opinion it does not depend upon the discretion of this Court; the subject has a right to come in the first instance, before he has been harassed and worn down by the grievous expense and delay of answers, exceptions, commissions and depositions; and to say to this Court, 'there is nothing of equity in this claim; the claim is wholly dependent upon the rules of the common law, and the facts, upon which this claim is founded, are triable by a jury; and, therefore, the Court ought not to proceed upon it, but dismiss it.'"

The majority of the Court, however, were of opinion that such an information would lie, on the ground that the relief which it sought was such as a Court of common law could not give (compare pp. 294, 313, below), inasmuch as it did not claim a specific estate, but required a discovery of the ancient boundaries of the hereditaments claimed, which were alleged to have been confounded by the intruders, and also an account, and that the power of the Court to remit any part of the suit to be tried at law was a sufficient protection to the defendant. They also said, however, that if the claim had been in fact a mere claim at law, the Prince of Wales ought to have proceeded by an information at law (pp. 226, 231). They held, therefore, that such an information would lie; and that, in the case of lands parcel of the Duchy of Cornwall, it might be laid by the Prince of Wales by his Attorney-General. An elaborate dissertation on the unfairness to defendants of the procedure by English information will be found in Stuart Moore, *Foreshore*, pp. 614 *sqq.*, but it must be remembered that these strictures apply in the main to the use of such informations for the recovery of real property, and are not generally appropriate to their use by the Crown for other purposes, as, for instance, for an account and discovery, where money or other things are claimed from a defaulting agent or officer.

It will be seen from the precedents printed below, pp. 286 *sqq.*, that the prayer of the Crown is for a declaration, injunction, payment, or whatever remedy it requires; and also, if necessary, for an account. In addition to these it prays full discovery, and in pursuance of this prayer, as already mentioned, interrogatories are at once administered, and the process is repeated as often as the Crown thinks necessary.

Where a plaintiff or plaintiffs is or are joined with the Attorney-General as informant on behalf of the King in the proceeding, the

process is headed "Information and Bill." (See the precedents below, pp. 286, 326.)

Specific Instances of English Informations.

Claims to Foreshore.

In *A.-G. v. Richards* (1785), 2 Anst. 603, it was held that an equity information would lie to abate a nuisance and purpresture on the foreshore in a harbour. So in *A.-G. v. Burrridge* (1822), 10 Price, 350; and *A.-G. v. Parmeter* (1822), 10 Price, 378, the Court held that the Attorney-General in such a case might proceed by English information for the purpose of protecting either the *jus privatum* of the King from the purpresture or the *jus publicum* of the subject from the nuisance, and that the Court might decree the abatement of such nuisance. (See also *R. v. Lord Grosvenor* (1819), 2 Stark. N. P. 511.) Other reported instances are: *A.-G. v. Farmen* (1676), 2 Lev. 171; *A.-G. v. Plymouth Corporation* (1754), Wight. 134; *Anon.* (1795), Fowler, Exch. Pr. (ed. 2) I. 257; *A.-G. v. Constable* (1879), 4 Ex. D. 172; 48 L. J. Ex. 455; *A.-G. v. Williamson* (1889), 60 L. T. 930; *A.-G. v. Emerson*, [1891] A. C. 649; 61 L. J. Q. B. 79; *A.-G. v. Newcastle-upon-Tyne Corporation*, [1899] 2 Q. B. 478; 68 L. J. Q. B. 1012. A precedent is printed below, p. 286.

As instances where the Crown has proceeded by ordinary information of intrusion may be cited *A.-G. v. Jones* (1863), 2 H. & C. 347; 33 L. J. Ex. 249; and *A.-G. v. Portsmouth Corporation* (1877), 25 W. R. 559. The Crown, as already observed, may also proceed in Chancery either with or without a relator, see *A.-G. v. Johnson* (1819), 2 Wils. Ch. 87; *London Corporation v. A.-G.* (1848), 1 H. L. C. 440; *A.-G. v. Chambers* (1854), 4 D. M. & G. 201; 23 L. J. Ch. 662; *A.-G. v. Chamberlaine* (1858), 4 K. & J. 292; *A.-G. v. Hanmer* (1858), 27 L. J. Ch. 837; *A.-G. v. Tomline* (1880), 14 Ch. D. 58; 49 L. J. Ch. 377. In the last-cited case the Secretary of State for War joined in the proceedings as plaintiff.

For the old practice as to the issue of a commission to find the Crown's title, see below, p. 238.

Claims to Other Lands and Minerals.

A.-G. v. Hallett (1847), 16 M. & W. 569; 16 L. J. Ex. 131, was an English information for an injunction to restrain the defendant from cutting down trees and underwood in a royal forest. In *A.-G. v. Barker* (1872), L. R. 7 Ex. 177; 41 L. J. Ex. 57, the Crown sought a declaration of its rights in a manor and of the custom of that manor with respect to compensation for surface damage, and an

injunction to restrain a certain action of trespass. *A.-G. v. Reveley* (1869), Karslake's Rep., was a claim by the Crown to certain land as waste of a manor. *A.-G. v. Crofts* (1708), 4 Bro. P. C. 136, was an information and bill for discovery of the consideration for a mortgage on an outlaw's estate and of what was due, and for a declaration that the Crown was entitled to redeem, if anything was due. *A.-G. v. Sitwell* (1835), 1 Y. & C. 559; 5 L. J. Ex. Eq. 86, was an information and bill by the Attorney-General and the Commissioners of Woods and Forests praying specific performance of an agreement, a declaration that the defendant was not entitled to have a certain advowson conveyed to him with a certain manor, and a decree that he should accept a conveyance of the manor without the advowson. *A.-G. v. Lord Stawell* (1785), 2 Anst. 592, was an information for an account of timber taken by the ranger of a royal forest, to which he alleged that he was entitled by grant. *A.-G. v. Vincent* (1724), Bunb. 192, was an English information and bill to discover copyhold lands, what timber had been cut, and what waste committed. In *A.-G. v. Lambe* (1838), 3 Y. & C. 162; 8 L. J. Ex. Eq. 23, the claim was for a declaration that the Duke of Cornwall was entitled to half of certain clay dug, and certain moneys received, by the defendant in respect of certain manorial wastes, and for discovery and an account. *A.-G. v. Lord Eardley* (1820), 8 Price, 39, was an information for an account of the titheable matters taken by the defendants upon certain lands in their occupation. Informations have also been filed for recovery of possession of property on the termination of long leases, for the recovery of ancient rents, and in respect of the exercise of franchises. As to common law informations of intrusion with respect to land and minerals, see above, p. 177. Proceedings may also be taken in Chancery by the Crown for a similar purpose, as in *A.-G. v. Mathias* (1858), 4 K. & J. 579; 27 L. J. Ch. 761, where the Attorney-General prayed a declaration that the defendant had no right to grant certain gales, and an account of the quantities of stone worked, and of the money received, by the defendant; and in *A.-G. v. Tomline* (1877), 5 Ch. D. 750; 46 L. J. Ch. 654, which was an information by the Attorney-General and a bill by the Secretary of State for War and the Duke of Connaught praying an information to restrain the defendant from digging in and trespassing on certain land, and an account and payment of the profits made by him from the produce of such digging, and damages.

Formerly, the Crown used at times to issue a commission for the holding of an inquisition as to the title of the Crown to lands, in cases where the procedure by English information would have been equally available. The last reported instance of this seems to be *R. v. Lord Yarborough* (1828), 1 Dow & Cl. 178, a case as to foreshore.

Money Claims.

There have been numerous cases where the Crown has proceeded by English information or English information and bill for discovery and an account and payment, in cases of money alleged to be due to it. There have been modern instances of such proceedings to recover the property of an extinct corporation, against railway companies for passenger duty, against a defaulting registrar of a County Court, against a defaulting military officer, against bankers in respect of moneys of the Crown standing to an account at their bank, and against a contractor alleged to owe money to the Crown under commercial contracts. See the precedents below, pp. 310 *sqq.* In the passenger duty cases, if the Crown has desired an account of the duty alleged to be payable, the procedure by English information has been adopted, as in *Great Western Rail. Co. v. A.-G.* (1866), L. R. 1 H. L. 1; 35 L. J. Ex. 123; and *A.-G. v. Metropolitan District Rail. Co.* (1880), 5 Ex. D. 218. So in other cases of unpaid duties, where an account was desired, as in *A.-G. v. Daly* (1833), Hay. & Jon. 379, and *A.-G. v. Conroy* (1838), 2 Jones, 791. *A.-G. v. Evans* (1862), 5 L. T. 760, was an information for arrears of fee farm rents. In *A.-G. v. Cresner* (1710), Park. 279, an English information was brought to discover what stock in hand of pepper the defendant had, and to recover duty upon it. Equity informations have also been utilised in suitable cases for the purpose of obtaining an account and payment of death duties from executors or administrators, as in *A.-G. v. Rowe* (1862), 1 H. & C. 31; 31 L. J. Ex. 314; *A.-G. v. Brackenbury* (1863), 1 H. & C. 782; 32 L. J. Ex. 108; *A.-G. v. Countess Blucher de Wahlstatt* (1864), 3 H. & C. 374; 34 L. J. Ex. 29, and *A.-G. v. Duke of Richmond, Gordon and Lennox* (No. 2), [1907] 2 K. B. 940; 96 L. J. K. B. 1049. The procedure for an account and payment by writ sued out by the Commissioners of Inland Revenue under ss. 54—64 of the Crown Suits, &c. Act, 1865, has been dealt with above, p. 186.

Of the nature of English informations were the informations for discovery and an account brought against army agents under 45 Geo. III. c. 58 (repealed by the Statute Law Revision Act, 1872 (35 & 36 Vict. c. 63)), as in *A.-G. v. Ross* (1820), 8 Price, 190; *A.-G. v. Brooksbank* (1827), 1 Y. & J. 439; 2 Y. & J. 37; and *Deare v. A.-G.* (1831), 2 Dow & Cl. 377. In such a case apparently no Statute of Limitations would assist the defendant. (*Brummell v. M'Pherson* (1828), 5 Russ. 263; 7 L. J. Ch. 1.)

As to the general liability to account to the Crown, see *Earl of Devonshire's Case* (1607), 11 Rep. 89 a, and above, p. 144. For bills

filed in the Exchequer against the Attorney-General by public accountants who were dissatisfied with the determination of the Board which had audited their accounts, see above, p. 160.

The Crown, if it chooses, can proceed in Chancery for an account in such cases. (*A.-G. v. Edmunds* (1868), L. R. 6 Eq. 381; 37 L. J. Ch. 706.)

Proceedings under the Marriage Acts.

The Marriage Act, 1823 (4 Geo. IV. c. 76), s. 23, provides for the filing of an English information by the Attorney-General in the Exchequer on the relation of a parent or guardian for forfeiture of an estate accruing to a party by a valid marriage between minors obtained by fraud. It also provides, however, that such forfeiture may be enforced by similar proceedings in Chancery, and this is the method which has usually been adopted. These provisions are extended by the Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 19, and the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23), s. 14. See below, p. 475, where the sections are referred to in greater detail.

CHAPTER II.

PRACTICE IN PROCEEDINGS IN EQUITY ON THE REVENUE SIDE OF
THE KING'S BENCH DIVISION.

General Observations.

THE practice on English informations is governed by Part II. of the Crown Suits, &c. Act, 1865 (p. 692), and the Rules of 1866 (p. 808), made under sect. 28 of that Act. That section was repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), but sect. 4 of that Act preserves these Rules. The power to make rules for the procedure by English information is now, by sect. 5 of the last-named Act and the Judicature Acts, vested in the Rule Committee.

The Committee have not annulled the Rules of 1866, but, by Ord. LXVIII. rr. 2 and 2A, Ord. II. r. 8, and Ords. XXVIII., XXXIV., XXXVIII., LII., LVIII., LXIV., LXV., LXVI., and LXX. are applied, so far as applicable, to all proceedings on the Revenue side of the King's Bench Division. A full summary of the procedure is now to be found in Vol. II. of the Annual Practice.

The reader is also referred to the older editions of Daniell's Chancery Practice, published when the Chancery Orders, from which the Rules of 1866 were largely drawn, were still in force. A general discussion of the equitable jurisdiction of the Exchequer will be found in *Wall v. A.-G.* (1823), 11 Price, 643, and the observations on that case at p. 710.

It is now proposed to deal with the details of this special practice, leaving the general prerogative of the Crown in points of procedure to be dealt with in Book VI. of this work.

Abatement.

See "Nolle Prosequi," "Revivor," and the provisions of Rule 7 (17) for making a decree effective against the representatives of a deceased defendant and persons claiming under him. See also above, p. 212.

It is provided by 1 Ann. c. 2 (st. 1, c. 8, Ruff.), s. 5, that no writ, process, or proceedings in or issuing out of any Court of equity shall

be determined, abated, or discontinued by the demise of the Crown. Consequently, the proceedings on an English information can only abate by the death or determination of the interest of the defendant, subject to Rule 7 (17).

Adjournment.

As to the power of the Court or a judge to adjourn a trial, see the Common Law Procedure Act, 1854, s. 19 (p. 669), applied by the Crown Suits, &c. Act, 1865, s. 22.

Affidavits. See "Evidence."

Amendment and Supplement.

An information may be amended in writing as directed by the Rules. (Crown Suits, &c. Act, 1865, s. 12, p. 693.) By sect. 24 of the same Act (p. 695), facts or circumstances occurring after the institution of a suit may be introduced by way of amendment into the original information, if the cause is otherwise in such a state as to allow of the information being amended, and, if not, may be stated on the record in such manner and subject to such regulations as the Rules direct.

Rule 3 (p. 811), as to the amendment of informations, must now be read with Ord. XXVIII., applied by Ord. LXVIII. r. 2. Rule 3 (1) must be taken to be superseded by Ord. XXVIII. r. 8. But apparently the Attorney-General may still amend his information as often as, and when, he pleases, without leave. Service of the amended information is provided for by Rule 3 (3—5). See also Ord. XXVIII. r. 10.

Rule 5 (2) (p. 812) provides for pleading by the defendant to the amended information, and the time of twenty-eight days therein limited presumably applies instead of the eight days limited by Ord. XXVIII. r. 5.

As to pleading where an answer is not required, see Rule 5 (3).

It seems now to be open to the defendant to apply to the Court to disallow the amendments under Ord. XXVIII. r. 4.

An amended information must be served in manner provided in the case of an original information. (Crown Suits, &c. Act, 1865, s. 12, p. 693.)

Where the informant in any cause, which is not in such a state as to allow of an amendment being made in the information, desires to state or put in issue facts or circumstances which have occurred after the institution of the suit, he may state them and put them in issue by filing a written or printed statement annexed to the

information in the King's Remembrancer's Department, and subsequent proceedings are had thereon as though it were a supplemental information. (Rule 13 (4), p. 824.) See also "Revivor."

Answer, Plea and Demurrer.

See also "Interrogatories."

Various precedents will be found below, pp. 296 *sqq.*

The defendant is not bound to answer unless interrogatories have been filed and a copy has been delivered to him. (Crown Suits, &c. Act, 1865, s. 14, p. 693.)

Sect. 15 of the same Act provides that a defendant, whether required to answer or not, may, without leave, put in an answer, plea, or demurrer within the time directed by the Rules, but thereafter he may only put in an answer, plea, or demurrer with the leave of the judge.

By sect. 16, the answer may contain not only the defendant's answer to the interrogatories, but also such statements material to the case as he thinks fit to set forth therein.

Sects. 17, 20 abolish the formalities of commissions to take pleas, &c. with respect to those taken within the jurisdiction, and of the messenger's oath on the filing of pleas taken without the jurisdiction, and provide that they may be filed, and alterations made therein before the taking thereof, authenticated as in the case of an affidavit. (See Ord. XXXVIII., applied by Ord. LXVIII. r. 2.)

As to answers without oath or signature, see the Annual Practice, Vol. II.

Answers, &c. taken out of the jurisdiction are now sworn in accordance with the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10); and see Ord. XXXVIII. r. 6.

By Rule 5 (1, 2) (p. 812), the defendant may demur alone within twelve days after appearance, but if required to answer the information, whether original or amended, he must put in his answer, plea, or demurrer thereto, not demurring alone, within twenty-eight days of the delivery to him of the interrogatories, or within further time allowed by the Court or a judge. Default subjects him to attachment.

By Rule 5 (3) (p. 812), a defendant who is served with a copy of an original or amended information, and who is not required to answer, may put in an answer, plea, or demurrer, not demurring alone, within fourteen days after the time within which he might, if required to answer, and appearing within the time limited for his appearance, have been served with interrogatories.

By Rule 5 (4), where a defendant is ordered to answer amendments and exceptions together, he must put in his further answer and his answer to the amendments within fourteen days after service of the interrogatories on the amended information, or such further time as the Court or a judge allows, on pain of attachment.

An answer is to be deemed sufficient (Rule 5 (5)), (i) where no exceptions for insufficiency are filed within six weeks; (ii) where the informant does not set down his exceptions for argument in the term next following their filing; (iii) where a further answer is filed, and the old exceptions are not set down for argument in the term next following the filing of such further answer.

The simple practice is that the defendant should swear and file a printed answer, which is permitted by Rule 6 (5) (p. 814).

But a more elaborate procedure is also provided for by the Rules. Under this procedure, answers (Rule 6 (1, 2), p. 813) are no longer to be engrossed on parchment, but are to be filed, written bookwise on the same paper as that on which informations are printed, and divided into consecutive paragraphs. Where the answer is filed, the defendant must leave with the King's Remembrancer a fair copy of it, without the schedules (if any) of accounts and documents, and the latter's clerks are to examine and correct the copy with the filed answer and return it with a certificate that it is correct and fit to be printed. No fee is demandable for this certificate. The defendant is then to have his answer printed in the same manner as an information, and leave a printed copy of it within four days of the filing with the King's Remembrancer, accompanied by a certificate of its accuracy, subject, in case of default, to the same penalties as if no answer had been filed (Rule 6 (3)). Then, within forty-eight hours after written demand, he is to have a copy ready for the informant, certified by the clerks of the King's Remembrancer's Department (there must be no alteration or interlineation in writing), and stamped with a *5s.* stamp (Rule 6 (4, 6, 11)). The informant has to pay the amount of the stamp, and *4d.* per folio for this copy, and may have not more than ten additional copies at $\frac{1}{2}d.$ per folio (Rule 6 (7, 8)). Co-defendants may have not more than six printed copies at the rate of $\frac{1}{2}d.$ per folio (Rule 6 (9)).

Office copies of schedules to answers may be obtained under Rule 6 (10).

As to answers by paupers, see "Pauper."

It is stated in Fowler, Exch. Pr. (ed. 2), I. 362, that lords of Parliament, as also the widows of temporal lords, answer upon protestation of honour only. As to translating the answers of

foreigners, see the same work, pp. 373 *sqq.* As to answers by married women, infants and lunatics, see pp. 402, 406, 422 respectively.

The general nature and practice of demurrers in equity proceedings in the Exchequer is dealt with in Fowler, I. 297 *sqq.*, and forms are given at pp. 322—324.

As to pleas, see Fowler, I. 325 *sqq.*

It seems to be a reasonable principle that the defendant should not be compelled to answer, if and so far as his answer would render him liable to criminal proceedings; hence the rule that the Attorney-General must waive forfeiture and penalties before suing by English information for duties. (See "Information.") So a successful demurrer was made to an English information to discover copyhold lands and waste, on the ground that there was a forfeiture of the place wasted and treble damages, and the Attorney-General had not waived forfeiture. (*A.-G. v. Vincent* (1724), Bunb. 192; 2 Eq. Ca. Abr. 378; cf. the argument in *Jones v. Meredith* (1739), 2 Com. 661, 664.) *A.-G. v. Cresner* (1710), Park. 279, raises the further point that, even though the Attorney-General waives forfeiture and penalties, it still remains open to a common informer to sue for them before the period of limitation is past. This was held to be a good cause of demurrer, and the Court thought that the English information by the Attorney-General should not be brought till after the period, within which a common informer could sue, was past. The Chief Baron, however, suggested that the Attorney-General could present an ordinary information at law within such period, thereby barring the common informer, and then bring a bill for discovery.

It was held, however, in *Duplessis v. A.-G.* (1753), 1 Bro. P. C. 415, that, on an English information to assert the King's title to lands of a person charged to be an alien, the defendant could not refuse to discover whether she were an alien or not, because the disability of an alien to hold lands was not a penalty or a forfeiture.

Neither is a defendant entitled to refuse to answer fully, on the ground that the facts charged, if coupled with other facts which are not charged, might be sufficient to establish a criminal offence, such as conspiracy. (*A.-G. v. Daly* (1833), Hay. & Jon. 379; *A.-G. v. Conroy* (1838), 2 Jones, 791.)

Generally, a defendant cannot object to disclose his case in his answer. (*Protector v. Lord Lumley* (1655), Hard. 22.)

It is the duty of the defendant to cause the documents in his possession or power to be diligently examined, and to give in his answer all the information which results from such examination. Otherwise the Court may deem his conduct so obstructive as to

condemn him in the costs of the suit. (See *A.-G. v. East Retford Corporation* (1833), 2 My. & K. 35, a case in Chancery.)

Appeal.

See Ord. LVIII., applied by Ord. LXVIII. r. 2. See also above, p. 214.

Sect. 32 of the Crown Suits Act does not apply to proceedings in equity; and therefore the question of stay of execution pending appeal is governed by Ord. LVIII. r. 16, only. (*A.-G. v. Emerson* (1889), 24 Q. B. D. 56; 59 L. J. Q. B. 192.)

Appearance.

Appearance is to be within eight days from service of copy of information. (Rule 2 (1), p. 808.) After the eight days, and within three weeks of service, the informant may apply to the King's Remembrancer, or at any other time to the Court or a judge, to enter an appearance for the defendant. (Rule 2 (2).) Where, however, the defendant is an infant, or a person of weak or unsound mind not so found, the Court or a judge may appoint a guardian by whom he may appear, subject to the provisions contained in the Rule. (Rule 2 (4), and notes thereto.) If the defendant is out of the jurisdiction, having been within the jurisdiction within the previous two years, and there is just ground for believing that he has absconded to avoid service, he may be ordered by advertisement to appear; and, if he does not, appearance may be entered for him. (Rule 2 (5).) In other cases where the defendant is out of the jurisdiction, service upon him is provided for by Rule 2 (6). If he does not appear, an appearance may be entered for him.

After appearance has been entered for a defendant, he may himself subsequently appear, without prejudice to anything done, or any right acquired by, the informant, including his right to the costs of the first appearance. (Rule 2 (7).)

Defendants in person must leave their names and place of residence, or their address for service, at the King's Remembrancer's Department. (Rule 2 (8).)

Attachment.

A defendant may be attached for failure to appear. (See the forms in the Crown Suits, &c. Act, 1865, Sched. I. (p. 704), and below, p. 285.)

He may also be attached, with the consequences set out in Rule 5 (2) (p. 812), if he fails to put in his answer, plea, or demurrer, not demurring alone, to an information, original or

amended, which he is required to answer. In cases of attachment it appears to be still necessary to show the original rule, order, or decree, or an office copy thereof. (Rule 12 (5), p. 823.)

Subject to these Rules, see the practice in Fowler, Exch. Pr. (ed. 2), I. 127 *sqq.*

As to the position of peers and members of Parliament with regard to attachment, see "Service."

Commission to examine Witnesses. See "Evidence."

Confession.

Rule 7 (p. 814) governs the procedure for moving to take an information *pro confesso*. It deals with judgment in default under the various circumstances specified in Rule 2. (See "Appearance.") Informations may be taken *pro confesso* against a defendant—(i) where he has been attached for want of answer (Rule 7 (1)); or (ii) where it has been impossible to attach him, and (a) he appears, or (b) an appearance is entered for him and he does not subsequently appear (Rule 7 (2—4)); or (iii) where he is in custody for want of answer and submits to have the information taken *pro confesso*. (Rule 7 (5).)

Rule 7 (6—8) provides for the hearing where an order has been made that an information be taken *pro confesso*, and the decree, either absolute or not absolute, to be made thereon.

The entry and service of the decree are dealt with in Rule 7 (10, 11), the enforcement of it by the appointment of a receiver or sequestration, in Rule 7 (9, 13), and the making absolute of a decree which is not absolute, in Rule 7 (15). By Rule 7 (17), a decree extends to the representatives of a deceased defendant, and to those claiming under a defendant.

Rule 7 (11, 12), provides for application by a defendant to set aside the decree. Rule 7 (14) provides for a re-hearing, before the enrolment of the decree, on application by a defendant waiving all objection to take the information *pro confesso*; and Rule 7 (16) deals with motions by a defendant, who has a case upon merits not appearing in the information, for leave to answer the information.

As to taking an information *pro confesso* against a corporation, see Fowler, Exch. Pr. (ed. 2), I. 176, 200.

Costs.

See the general article on costs (below, pp. 613, 618); and the special provisions of the Crown Suits Act, 1855, ss. 1, 2 (p. 673),

and of the Queen's Remembrancer Act, 1859, s. 21 (p. 679). Rule 21 and the Schedule to the Rules (pp. 826, 827) prescribe the fees and charges to be allowed to solicitors. See also the Rules of 1865 (p. 805).

Ord. XLIII. r. 7, which abolishes the issue of a subpœna for costs, except by leave of the Court or a judge, does not apply; and see Rule 21 (4).

Court and Judge.

See above, p. 216, the Crown Suits, &c. Act, 1865, s. 6 (p. 692), and Rule 24 (1) (p. 827). As to orders by a single judge in vacation, see the Exchequer Court Act, 1842, s. 9 (p. 663). As to the powers, if any, of a master to make orders, see above, p. 217. As to the general nature of the equitable jurisdiction of the Court of Exchequer as a Court of Revenue, see *A.-G. v. Halling* (1847), 15 M. & W. 589; 16 L. J. Ex. 303; and the other cases referred to above, p. 217.

Decrees, Rules and Orders.

As to the form of decrees, see Rule 12 (1) (p. 823); and as to rules and orders, Rule 12 (2—5).

Demurrer.

See "Answer, Plea and Demurrer."

Directions, Summons for.

The provisions of Ord. XXX. on this matter have no application to proceedings on the Revenue side of the King's Bench Division.

Discontinuance.

See above, p. 218. An English information exhibited by the Attorney-General cannot be dismissed for want of prosecution. It is his privilege to proceed in what way he thinks proper. (Fowler, Exch. Pr. (ed. 2), I. 104.) A similar statement will be found later in the same work (II. 33), where two instances of the discharge of orders of dismissal on the above grounds are given. These passages were cited with approval by the Court in *A.-G. v. Williamson* (1889), 60 L. T. 930, which was an application by the defendant to an English information for an order that the information should be dismissed, or judgment entered for the defendant, and that the Crown should pay his costs. The Court held that it had no power to dismiss the information, as the R. S. C. relating to dismissal for want of prosecution were not applied to proceedings on the Revenue side of the King's Bench Division; and that, as the suit had not been determined, but

the Attorney-General had merely intimated that he did not propose to proceed further, the Crown could not be ordered to pay the defendant's costs.

Discovery.

See "Answer, Plea and Demurrer," "Evidence," "Interrogatories," and the general article on discovery, below, p. 598. Precedents for the usual claim for discovery in English informations will be found below, pp. 296, 314, 325.

In *A.-G. v. Brooksbank* (1827), 1 Y. & J. 439; 2 Y. & J. 37, it was held, on an information for discovery of accounts against an army agent, that under the particular circumstances and contrary to the usual rule against discovery by the Crown, the information ought to be stayed until the Secretary at War produced certain vouchers and accounts, which the defendant required for the purpose of amending his plea.

Similarly, in *Deare v. A.-G.* (1835), 1 Y. & C. 197, on a cross bill against the Attorney-General and the Secretary at War filed by an army agent, the Court overruled a demurrer lodged by the defendants on the ground that they were public officers and for want of equity. The cross bill claimed discovery amongst other things.

Documents referred to in the answer must be produced by the defendant. (*A.-G. v. Lambe* (1838), 3 Y. & C. 162; 8 L. J. Ex. Eq. 23; see *Hardman v. Ellames* (1834), 2 My. & K. 732, 745; 4 L. J. Ch. 181.) Further, the Crown is entitled to discovery of anything which might tend to show that the defendants are not entitled to the property in question to the extent to which they claim (*A.-G. v. Newcastle-upon-Tyne Corporation*, [1897] 2 Q. B. 384; 66 L. J. Q. B. 593); and although the defendant swears that certain documents, which are in his possession and are material, form and support his own title, and do not contain anything which could form or support the informant's case, or impeach his own defence, the Court will order them to be produced, if, from the whole of the defendant's answer or from his description of the documents, the Court is reasonably certain that the defendant has erroneously represented or misconceived the nature of such documents. (*A.-G. v. Emerson* (1882), 10 Q. B. D. 191; 52 L. J. Q. B. 67.) The right of the Crown to such discovery is not barred by an omission to except to the answer as insufficient. (*A.-G. v. Newcastle-upon-Tyne Corporation*, *ubi sup.*)

Distringas.

The writ of distringas against a corporation to appear to an information is abolished by the Crown Suits, &c. Act, 1865, s. 8 (p. 693). The old practice appears in Fowler, Exch. Pr. (ed. 2), I. 176 *sqq.*

By sect. 27 of the Crown Suits, &c. Act, 1865 (p. 695), and Rule 19, a writ of distringas on behalf of the Attorney-General or the Attorney-General of the Prince of Wales, to restrain the transfer of stock transferable at the Bank of England, or the payment of the dividends thereon, is to continue to be issuable from the King's Remembrancer's Department in the form theretofore made, but concluding with the date of the day, month and year of issue only. See now also Ord. II. r. 8, applied by Ord. LXVIII. r. 2A. As to the issue of process in vacation, see the Exchequer Court Act, 1842, s. 8 (p. 663).

Evidence.

The Crown Suits, &c. Act, 1865, s. 21 (p. 694), gave power to abolish by rules the examination of witnesses by written interrogatories, and this was done by Rule 10 (1) (p. 819), except in cases where the Court or a judge otherwise directs. The same section gives power to amend the practice as to evidence from time to time, and empowers any person, directed to take evidence by the rules or by the Court or a judge, to administer oaths and take declarations.

Rule 10 (p. 819) governs the procedure as to evidence. The primary method contemplated by the Rules, in which evidence is to be taken, is by affidavit, and the evidence in chief on both sides, taken before the hearing to be used at the hearing, is to be closed within eight weeks of issue joined, or such extended time as the Court or a judge permits. If it is desired to use an affidavit filed before issue joined, notice in writing to that effect must be given to the opposite party within one month after issue joined, unless the Court or a judge gives special leave to the contrary.

As to the form and filing of the affidavits, see Rule 10 (6, 7, 16), which must now be read with Ord. XXXVIII., applied by Ord. LXVIII. r. 2.

The giving of notice to cross-examine a witness on his affidavit, either at the hearing or before a special examiner, is provided for by Rule 10 (9—13), and a form of subpoena is given.

By Rule 10 (14), the Court may require the production and oral examination before itself of any witness or party.

Rule 10 (15) provides for the taking of evidence subsequently to the hearing of the cause by affidavit, subject to any special directions of the Court or a judge.

The parties may, however, apply that evidence as to any facts or issues may be taken *vivâ voce* at the hearing.

The application is to be made (Rule 10 (2, 3)) by summons within fourteen days after issue joined, and the facts and issues, in respect of which it is made, must be distinctly and concisely specified.

in the summons. If the judge makes the order, the witnesses are to be examined at the hearing, and no affidavit evidence is admissible in respect of such facts and issues.

The judge may also (Rule 10 (4)), on the application of either party by summons, order a particular witness or witnesses to be examined orally before a special examiner, either with respect to such facts and issues or otherwise.

The procedure was examined in *A.-G. v. Metropolitan District Rail. Co.* (1880), 5 Ex. D. 218, which was said to be the first instance of an application under Rule 10 (2). Jessel, M.R., said that when the Rule was made the practice in Chancery and on the Equity side of the Exchequer was not to take evidence *vivâ voce* unless in certain exceptional cases, whereas, after the Judicature Acts, the High Court could always take evidence *vivâ voce*, and, in view of the R. S. C. of 1875, it was the intention of the Legislature that evidence should always be taken orally, unless there were exceptional reasons against it. He therefore thought that the onus now lay upon the party resisting the application to show that there was reason why the evidence should not be taken orally, and not upon the applicant to show why it should be so taken. *Sed quære* whether the learned judge was entitled to read the current practice into these Rules at all, unless he was empowered to do so by the Legislature, though no doubt it is not easy for a judge, in exercising his discretion under Rule 10 (2), altogether to put aside the now prevailing practice as to oral evidence.

The decision in this case, whether right or wrong, must probably now be taken in preference to decisions before the Judicature Acts. The late Mr. Stuart Moore (Foresore, p. 617) would have us think that, on the older authorities, it was incumbent on the Court, as soon as the case appeared to be a matter of law and fact, to direct the case to be tried by a Latin information and by a jury; but this does not appear to have been the case. The Court in its discretion only, and if the case seemed so to require, directed a trial at law. This is borne out by *A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167, apart from the dissenting judgment of Wood, B. (see above, p. 235). In *A.-G. v. Crofts* (1708), 4 Bro. P. C. 136, we find specific issues directed to be tried by a jury, and again in *A.-G. v. Burridge* (1822), 10 Price, 350, issues were ordered to be tried upon a particular point. On the other hand, the similar case of *A.-G. v. Parmeter* (1822), 10 Price, 378, was tried entirely on depositions.

See also as to evidence, sects. 20—27 of the Common Law Procedure Act, 1854 (p. 669), applied by the Crown Suits, &c. Act, 1865, s. 22.

The distinction between an English information and an action of ejectment with respect to the *onus probandi* is discussed in *A.-G. v. Reveley* (1869), Karslake's Rep.

Exceptions.

Exceptions to the defendant's answer appear to be governed by the following regulations:—

- (1) The Crown must give notice of the filing of the exceptions, and the defendant must obtain a copy thereof from the King's Remembrancer's Department.
- (2) The informant must give notice of the exceptions being set down for argument.
- (3) If the defendant submits to the exceptions he must give notice of his intention, both to the informant's solicitor and to the King's Remembrancer, two clear days before the day fixed for the argument.
- (4) Eight days after submission he must file a further answer or apply to a judge for further time.

As to the conditions under which an answer is to be deemed sufficient, and as to the answer, where the defendant is ordered to answer amendments and exceptions together, see "Answer, Plea and Demurrer."

Omission to except to the answer does not bar the Crown's right to full discovery. (*A.-G. v. Newcastle-upon-Tyne Corporation*, [1897] 2 Q. B. 384; 66 L. J. Q. B. 593.)

In an information in Chancery, the Court being of opinion that the interrogatories were more extensive than the purposes of the suit required, referred it to the Attorney-General to consider what course ought to be taken with regard to the exceptions to the answer, staying all proceedings in the meantime. (*A.-G. v. Carlisle Corporation* (1831), 4 Sim. 275.)

Execution.

See above, pp. 162, 221, and the Crown Suits, &c. Act, 1865, s. 50, and the Act applied thereby (p. 700).

Fees.

See above, p. 222, as to the application of the Order as to Supreme Court Fees of 1884, r. 2. A table of fees will be found in the Rules of 1865 (below, p. 805), and a table of fees and charges to be allowed to solicitors is annexed to the Rules of 1866, and printed below, p. 827.

Information.

See also "Amendment," "Service."

By the Crown Suits, &c. Act, 1865, ss. 7, 8 (p. 693), all informations must be printed and are to be served direct, with an indorsement in the form given in Sched. I. to the Act (p. 704), with such variations as circumstances require. The present form is printed below, p. 285. No preliminary writ is required.

By sect. 9 service is effected in the same manner as service of a writ of subpœna (see above, pp. 229, 230), save that the original information shall not be produced; but in the case of a corporation aggregate service is effected by delivery of a printed information, with the indorsement, to the mayor or other head officer, or to the town clerk, clerk, treasurer or secretary of the corporation.

The information served must be first so marked by the proper officer of the Court as to indicate the filing of the information and the date of the filing. (Sect. 10.)

The defendant is entitled to as many printed copies of the information as he requires, at the rate of $\frac{1}{2}d.$ per folio of seventy-two words. (Sect. 11 and Rule 1 (2), pp. 693, 808.)

Rule 1 (1) describes the exact manner in which the information is to be printed. It is to be divided into paragraphs numbered consecutively.

As to the issue of process in vacation, see the Exchequer Court Act, 1842, s. 8 (p. 663).

Several precedents of informations will be found below, pp. 286 *sqq.*, including precedents of informations and bills, where a plaintiff is joined with the Attorney-General.

The information in *A.-G. v. Burridge* (1822), 10 Price, 350, which is fully set out in the report, is referred to by the reporter as a model of English informations relating to foreshore rights.

Formerly informations were addressed to the Chancellor, the Chief Baron and the Barons of the Exchequer.

The general character of English informations is discussed above, p. 234.

It appears from *A.-G. v. Mico* (1658), Hard. 137, and *A.-G. v. Anon.* (1661), Hard. 201, that the Attorney-General might file an information for the discovery of goods, and so sue for the duty on them, if he waived his right to prosecute for forfeiture and penalties. See further, "Answer, Plea and Demurrer," above, p. 245.

Injunction.

Where the Court is moved to grant or dissolve an injunction in a pending suit, the defendant's answer is to be regarded merely as his

affidavit, and affidavits may be received and read in opposition thereto. (Rule 10 (17), p. 822.)

Interrogatories.

See also "Answer, Plea and Demurrer," "Exceptions."

By the Crown Suits, &c. Act, 1865, s. 13 (p. 693), an information is not to contain interrogatories, but the informant may file interrogatories for the examination of defendants from whom he requires an answer, and deliver to each such defendant or his solicitor a copy of the interrogatories, or of such of them as are applicable to the particular defendant, within the time limited by the Rules.

By Rule 4 (1, 2) (p. 811), such interrogatories are to be filed within eight days after the time limited for the appearance of the defendant, or, after that period, by special leave of the Court or a judge.

The copy to be delivered to the defendant or his solicitor is to be examined with the original by the clerks of the King's Remembrancer, and they, on finding it correct, are to mark it as an office copy. (Rule 4 (3).)

If the defendant does not appear within the time limited by the Rules, the informant may deliver such copy interrogatories to the defendant at any time after the time limited for his appearance and before he appears, or to the defendant or his solicitor within eight days after his appearance. (Rule 4 (4).)

Interrogatories are to be written on paper of the same description and size as that on which informations are to be printed. (Rule 14, p. 824.)

As to interrogatories for examining witnesses out of the jurisdiction, see Rule 10 (1), p. 819.

King's Remembrancer's Department.

See above, p. 225. Rule 139 of the Rules of 1860 is reproduced in Rule 22, p. 826.

Limitation of Time. See the general article below, p. 566.

Motions and other Applications.

Ord. LII., relating to these matters, is applied by Ord. LXVIII. r. 2.

By Rule 5 (6) (p. 813), corresponding to Ord. LII. r. 5, unless the Court or a judge gives special leave to the contrary, there must be at least two clear days between the service of a notice of motion and a day named in the notice for hearing the motion. *Quære* whether

the remainder of the clause, as to the computation of the days, is superseded by Ord. LXIV. r. 2, applied by Ord. LXVIII. r. 2.

New Trial.

There are no provisions as to a new trial which apply to proceedings in equity on the Revenue side of the King's Bench Division.

Nolle Prosequi. See "Discontinuance," and above, p. 218.

Non-compliance with the Rules, Effect of.

Ord. LXX. is applied by Ord. LXVIII. r. 2. As to its effect, see above, p. 226.

Notices, Printing, Copies, &c.

See Ord. LXVI., applied by Ord. LXVIII. r. 2.

Parties.

See the Crown Suits, &c. Act, 1865, ss. 5, 6 (p. 692), and Rule 24 (2). As to English informations by the Attorney-General of the Prince of Wales, see also *A.-G. to the Prince of Wales v. St. Aubyn* (1811), Wight. 167. See further the note on "Parties" in proceedings at law, above, p. 226; and the article on the Prince of Wales and Duke of Cornwall, above, p. 7. As to an English bill in Chancery by the Queen Consort, see above, p. 6.

As to appearance by infants and persons of weak and unsound mind, see "Appearance."

A plaintiff may be joined with the Attorney-General, in which case the process is entitled "information and bill."

In *A.-G. v. Chitty* (1749), Fowler, Exch. Pr. (ed. 2), I. 105, an information for the discovery of the quantity of raisins imported by the defendant, and for payment of the higher duty thereon, the Crown having obtained judgment and having had the defendant committed for non-payment, his brothers, who paid the debt, were ordered by the Court to stand in the place of the Crown, and to have the aid of the Court to reimburse themselves.

Pauper.

Where a defendant defends *in formâ pauperis*, his answer is to be filed, divided into paragraphs, and written bookwise upon paper of the same size and description as that upon which informations are printed; but the other provisions as to printing, certifying and providing copies of answers do not apply. (Rule 6 (13), p. 814.)

See Fowler, Exch. Pr. (ed. 2), I. 425, for the practice as to the admission of persons to defend *in formâ pauperis*.

Payment into and out of Court.

See Rule 16 (p. 824), which is similar to Rules 132—134 of 1860 (pp. 227, 773).

Plea. See "Answer, Plea and Demurrer."

Pleading.

See "Answer, Plea and Demurrer," "Exceptions," "Information," "Replication and Joinder of Issue," "Traversing Note," and the precedents printed below, pp. 286 *seq.*

Generally, pleas, demurrers, interrogatories, traversing notes, replications, supplemental statements, exceptions and certificates, to be filed in the King's Remembrancer's Department, are to be written on paper of the same description and size as that on which informations are printed. (Rule 14, p. 824.)

As to the proper title of pleadings, see above, pp. 227, 237.

Recognisances.

Rule 17 (p. 825) corresponds in the main to Rules 68, 71 and 72 of the Rules of 1860. See those Rules and the note thereto, pp. 764, 765.

Replication and Joinder of Issue.

A replication in the form given in Rule 9 (1) (p. 819) is to be filed, and thereupon the cause is to be deemed completely at issue, and, on notice of the filing being given to the defendant, both sides may proceed to verify their case by evidence.

For the old rambling form of replication signed by the Attorney-General, with the "absque hoc," see Fowler, Exch. Pr. (ed. 2), II. 45.

Revivor.

By sect. 23 of the Crown Suits, &c. Act, 1865 (p. 694), where a suit becomes abated by death or otherwise, or becomes defective by reason of some change or transmission of interest or liability, an order to the effect of an order to revive or a supplemental decree may be obtained as of course; and the parties served with it are to be parties to the suit, provided that any party so served may apply to discharge the order on any ground that would have been open to him on an information of revivor or supplemental information, and that the order shall be of no effect against a party under disability other than coverture until the appointment of a guardian *ad litem*.

These provisions are carried out by Rule 13 (p. 823). Rule 2 (1—7) is to apply as if the order for revivor were an information.

filed on the day on which the order is obtained, and to which the persons who would be defendants to an information of revivor or supplemental information were defendants.

An application for discharge of the order must be made within twelve days after service, or, in the case of a person under disability other than coverture, within twelve days after the appointment of a guardian *ad litem*.

Service.

As to service of informations and amended informations, see "Amendment," "Information"; of interrogatories, see "Interrogatories."

Service out of the jurisdiction is provided for by Rule 2 (6) (p. 810); where a defendant is thought to have absconded to avoid service, by Rule 2 (5).

The service of a copy of a rule, order, or decree, or of an office copy thereof, is sufficient service to bring a party into contempt, and it is not, except in cases of attachment, necessary to the regular service of a rule, order, or decree that the original or an office copy thereof should be shown, unless sight thereof be demanded (Rule 12 (4, 5), p. 823).

It is stated in Fowler, Exch. Pr. (ed. 2) I. 165, that service on peers and peeresses of the realm and bishops was to be effected by letters missive, from their "very loving friends" the Lord Chief Baron and the Barons of the Exchequer, though sequestration followed, if the "heartly commendations" contained in the letter were not obeyed. The practice as to letters missive, however, seems to be overridden by the specific provisions of sect. 8 and Sched. I. of the Crown Suits, &c. Act, 1865 (pp. 693, 704). In the case of a member of the House of Commons, Fowler (p. 175) states that a subpoena was issued and sequestration followed on disobedience. Whether members of either House would be regarded as privileged from attachment on non-compliance with the information is, in the abstract, not quite clear. If disobedience were to be regarded as a contempt of Court, they would probably not be so exempt, but if it were to be regarded as a mere commitment under a civil process, the reverse might be the case. It seems to depend on the attitude of Parliament in the particular case (see May, Parliamentary Practice (ed. 11), pp. 115—123; Oswald, Contempt of Court (ed. 2), pp. 179—181). But the matter seems to be covered by the Parliamentary Privilege Act, 1737 (11 Geo. II. c. 24), s. 4 (see above, p. 146), which, while providing that Crown proceedings shall not be stayed by a claim of privilege, exempts members from liability to arrest under them.

Special Case.

Ord. XXXIV. is applied by Ord. LXVIII. r. 2, but it does not appear that its provisions have much applicability to the proceedings in equity, with which we are now dealing.

Time.

For appearance, eight days (Rule 2 (1), p. 808); for interrogatories, eight days from appearance, except by special leave (Rule 4 (1, 2), p. 811); for demurrer alone, twelve days from appearance (Rule 5 (1), p. 812); for answer, where required to answer, twenty-eight days from delivery of interrogatories (Rule 5 (2)); for answer, where not required to answer, fourteen days from the end of the time within which interrogatories might have been delivered (Rule 5 (3)); for answer to amendments and exceptions together, when ordered to make such answer, fourteen days after delivery of interrogatories on the amended information (Rule 5 (4)); for setting down for hearing, eight weeks from the closing of the evidence (Rule 11 (1), p. 822); for use at the hearing of affidavits filed before issue joined, one month after issue joined (Rule 10 (8), p. 820); for discharge of order of revivor, twelve days from service thereof (Rule 13 (2), p. 823); for notice of motion to take an information *pro confesso*, three weeks from attachment for default of answer (Rule 7 (1), p. 814).

The times limited apply both to town and country causes (Rule 5 (7), p. 813). Generally, Ord. LXIV., as to time, is now applied by Ord. LXVIII. r. 2, and with this compare Rule 15 (p. 824). As to the power of the Court or a judge to enlarge or abridge time, see Rule 20 (p. 825), and Ord. LXIV. r. 7.

Traversing Note.

If the defendant, being required to answer, has not answered in the due time, the informant may file a traversing note in the King's Remembrancer's Department to this effect: "The informant intends to proceed with the case as if the defendant had filed an answer traversing the case made by the information." A similar course may be pursued in the case of failure to put in an answer to an amended information, or to put in a further answer, and also in cases where a demurrer or plea to the whole information has been overruled, and the informant does not require an answer to the information (Rule 8 (1—4), p. 818). A copy of the traversing note must be served on the defendant, and has the same effect as an answer; the defendant may then only put in an answer with the special leave of the Court or a judge (Rule 8 (5—7)).

Trial.

See "Evidence."

By Rule 11 (p. 822), the informant must set down the cause for hearing within eight weeks after the evidence has been closed, and must serve upon the defendant or his solicitor a subpoena to hear judgment. If he does not do so, a defendant may, after the expiration of the eight weeks, set the cause down and serve such subpoena on the informant's solicitor and the other defendants, if any.

The subpoena must be served at least ten days before the return, and should be in the form set out in the Rule.

If no evidence is required, the informant may obtain an order from the King's Remembrancer's Department for the cause to be heard on information and answer.

By 33 Hen. VIII. c. 39, s. 51, any suit commenced or any process awarded for the King for the recovery of any debt of the King is to be preferred before the suit of any other person.

As to the privileges of the Attorney-General, see above, pp. 9 *sqq.*

Venue.

See the general article on venue below, p. 581, and the Queen's Remembrancer Act, 1859, s. 17 (p. 678).

Writ.

A writ is not required before the issue of an information (see above, "Information"). But where a writ is necessary in a suit, it is to be prepared and issued in manner provided by Rule 18 (p. 825), which corresponds to a similar Rule for proceedings at law; with this must now be read Ord. II. r. 8, applied by Ord. LXVIII. r. 2A.

As to the issue of process in vacation, see the Exchequer Court Act, 1842, s. 8 (p. 663).

APPENDIX OF PRECEDENTS.

PART I.

Proceedings at Law on the Revenue Side of the King's Bench Division.

Writ of Subpœna.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

EDWARD THE SEVENTH by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith To Greeting. We command and strictly enjoin you that within Fourteen Days from the Service of this Writ, inclusive of the day of such Service, you cause an Appearance to be entered for you in the King's Bench Division of Our High Court of Justice, to answer Us concerning certain Articles then and there on Our behalf to be objected against you, and Take Notice that in default of your so doing We shall proceed thereon to Judgment and Execution.

Witness the Right Honourable
at Westminster the day of
hundred and

Lord High Chancellor of Great Britain
in the Year of our Lord One thousand

At the Suit of His Majesty's Attorney-General

By Information

This Writ is issued against you by the Solicitor for the affairs of His Majesty's Treasury (Law Courts Branch), of 276 Royal Courts of Justice, Strand, W.C., the Informant's Solicitor.

For the [*insert claim*].

Take Notice that in default of your entering an Appearance according to the exigency of this Writ, an Information may be filed and Judgment signed thereon, and Execution issued on such Judgment together with Costs, at the expiration of Fourteen Days from the day of signing such Judgment.

N.B.—Appearances to be entered at the King's Remembrancer's Department,
Royal Courts of Justice, Strand, London.

General Form of Information to recover Duties.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

The day of in the Year of our Lord One thousand
nine hundred and .

Middlesex } Sir J. L. W. Knight the Attorney-General of our Sovereign Lord
to Wit. } the King who prosecutes for His Majesty in this behalf informs
the Court that is indebted to His Majesty in the sum to wit of
pounds shillings and pence for Duties of payable by him to
His Majesty under and by virtue of the Statutes in that case made and provided
and duly assessed upon him by a certain assessment of the said Duties duly
made for the Parish of in the District of in the County of
according to the form of the Statutes in such case made and provided for the
year ending the fifth day of April in the year of our Lord One thousand nine
hundred and .

2nd Count.—And the said Attorney-General who prosecutes as aforesaid
further informs the Court that the said is indebted to His Majesty in the
further sum to wit of pounds shillings and pence for Duties
of payable by him to His Majesty under and by virtue of the Statutes in
that case made and provided and duly assessed upon him by a certain assessment
of the said duties duly made for the Parish of in the District of in
the County of according to the form of the Statutes in such case made and
provided for the year ending the fifth day of April in the year of our Lord One
thousand nine hundred and .

3rd Count.—And the said Attorney-General who prosecutes as aforesaid
further informs the Court that the said is indebted to His Majesty in the
further sum to wit of pounds shillings and pence for Duties
of payable by him to His Majesty under and by virtue of the Statutes in
that case made and provided and duly assessed upon him by a certain assessment
of the said Duties duly made for the Parish of in the District of in
the County of according to the form of the Statutes in such case made and
provided for the year ending the fifth day of April in the year of our Lord One
thousand nine hundred and .

Wherefore the said Attorney-General prayeth the consideration of the Court
in the premises and that the said several sums of money so due amounting in
the whole to pounds shillings and pence may be adjudged to
His Majesty.

Information under the Customs Consolidation Act, 1876, s. 186.

Sir J. L. W. Knight, the Attorney-General of our Lord the King, who
prosecutes for His Majesty in this behalf, informs the Court:—

That A. B. on the day of , in the year of our Lord One thousand
nine hundred and in the United Kingdom, to wit at X., did knowingly
harbour, keep and conceal, and knowingly permit, suffer, cause and procure
to be harboured, kept and concealed certain uncustomed goods, that is to say

weight of [Saccharin]—the duties of Customs for which had not been paid or secured—of the value including the duty payable thereon of £ sterling—the said goods being then and there goods liable to the payment of duties of Customs to His said Majesty on the importation thereof into the United Kingdom—with intent to defraud His said Majesty of certain duties due and payable thereon, contrary to the Statute in that case made and provided. Whereby and by force of the Statutes made and provided the said A. B. hath forfeited and lost the sum of £ sterling, which said sum—being the treble duty-paid value of the said goods—the said Attorney-General avers that the Commissioners of His said Majesty's Customs have elected to sue for in lieu and instead of the penalty of One hundred pounds sterling.

Second Count.—And the said Attorney-General, who prosecutes as aforesaid, doth on behalf of His said Majesty further give the Court here to understand and be informed:—

That the said A. B. on the day of in the year aforesaid in the United Kingdom, to wit at the place aforesaid, did then and there knowingly acquire possession of certain uncustomed goods, that is to say weight of [Saccharin]—the duties of Customs for which had not been paid or secured—of the value, including the duty payable thereon, of £ sterling—the said goods being then and there goods liable to the payment of duties of Customs to His said Majesty on the importation thereof into the United Kingdom—with intent to defraud His said Majesty of certain duties due and payable thereon contrary to the Statute in that case made and provided. Whereby and by force of the Statutes made and provided the said A. B. hath forfeited and lost the sum of £ sterling, which said sum—being the treble duty-paid value of the said goods—the said Attorney-General avers that the said Commissioners of His said Majesty's Customs have elected to sue for in lieu and instead of the penalty of One hundred pounds sterling.

Third Count.—And the said Attorney-General who prosecutes as aforesaid doth on behalf of His said Majesty further give the Court here to understand and be informed:—

That the said A. B. on the day of aforesaid in the year aforesaid in the United Kingdom, to wit at the place aforesaid, was then and there knowingly concerned in carrying, removing, depositing, concealing and dealing with certain uncustomed goods that is to say weight of [Saccharin]—the duties of Customs for which had not been paid or secured—of the value including the duty payable thereon of £ sterling—the said goods being then and there liable to the payment of duties of Customs to His said Majesty on the importation thereof into the United Kingdom—with intent to defraud His said Majesty of certain duties due and payable thereon, contrary to the Statute in that case made and provided. Whereby and by force of the Statutes made and provided the said A. B. hath forfeited and lost the sum of £ sterling, which said sum—being the treble duty-paid value of the said goods—the said Attorney-General avers that the Commissioners of His said Majesty's Customs have elected to sue for in lieu and instead of the penalty of One hundred pounds sterling.

Fourth Count.—And the said Attorney-General who prosecutes as aforesaid doth on behalf of His said Majesty further give the Court here to understand and be informed:—

That the said A. B. on the day last aforesaid in the year aforesaid in the United Kingdom, to wit at the place aforesaid, was then and there knowingly

concerned in a fraudulent evasion of certain duties of Customs, and of the laws and restrictions of the Customs relating to the importation, unshipping, landing and delivery of certain goods contrary to the Customs Acts, that is to say, divers, to wit weight of [Saccharin]—the duties of Customs for which had not been paid or secured—of the value including the duty payable thereon of £ sterling—the said goods being then and there goods liable to payment of duties of Customs to His said Majesty on the importation thereof into the United Kingdom—with intent to defraud His said Majesty of certain duties due and payable thereon contrary to the Statute in that case made and provided. Whereby and by force of the Statutes made and provided the said A. B. hath forfeited and lost the sum of £ sterling, which said sum—being the treble duty-paid value of the said goods—the said Attorney-General avers that the Commissioners of His said Majesty's Customs have elected to sue for in lieu and instead of the penalty of One hundred pounds sterling.

Wherefore His said Majesty's Attorney-General on behalf of His said Majesty prayeth the consideration of this Court in the premises, and that the said sums of money so respectively forfeited and lost to His said Majesty by the said A. B. may be adjudged to His said Majesty.

Pleas to Informations.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

The day of in the year of our Lord 19 .

A. B. at the suit of His Majesty's Attorney- General. By Inform- ation. Not Guilty.	{	The said A. B. by C. D. his Attorney for Plea in this behalf says that he is not guilty of the several offences or of any or either of them in the Counts of the said Information charged supposed to have been by him done and committed contrary to the form of the Statutes therein mentioned in manner and form as by the said Counts of the said Information is above supposed and of this he putteth himself upon the Country.
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And for further plea in this behalf the said A. B. saith that the goods in the Count of the said Information mentioned did not nor did

Non
devenerunt. any part thereof come to the hands and possession of him the said A. B. contrary to the form of the Statute in that case made and provided in manner and form as by the said Count of the said Information is above supposed and of this he putteth himself upon the Country.

And for further plea in this behalf the said A. B. saith that he is not indebted unto His said Majesty in the several sums of money in the said

Not
indebted. Information mentioned or any or either of them or any part thereof in manner and form as in and by the said Information is charged against him and of this he putteth himself upon the Country.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

The day of in the year of our Lord 19 .

A. B. A. B. appears here in Court by C. D. his Attorney and claims
claiming the property of the Goods and Commodities mentioned in the said
at the suit Information to belong to him and for plea in this behalf saith that
of the the said Goods and Commodities did not become nor are they for-
Attorney- feited for the several causes in the said Information mentioned or
General. any or either of them in manner and form as in and by the said
By Infm. Information is charged and this he prays may be enquired of
of Seizure. the Country.

Similiter.

The day of .

And the Attorney-General of our Lord the King as to the Plea of the Defendant herein whereof he hath put himself upon the Country saith that he doth the like.

Therefore let a Jury come.

Pleadings on an Information for Penalties.

Indorsement of Subpœna.

For a penalty of £100 due to His Majesty under sect. of the Act, .

Information.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

Between HIS MAJESTY'S ATTORNEY-GENERAL (on behalf of His Majesty) - - - - - *Informant*
and
A. B. - - - - - *Defendant.*

The day of in the year of our Lord 19 .

Middlesex } Sir the Attorney-General for our Sovereign Lord the King
to Wit. } who prosecutes for His Majesty in this behalf informs the Court as follows:—[*set out the statutes and the facts*].

The Defendant thereby became liable to a penalty not exceeding £ . Wherefore the said Attorney-General prayeth the consideration of the Court to the premises and that the said sum of £ may be adjudged to His Majesty.

Plea.

In answer to the Information herein the Defendant A. B. says that he is not guilty and of this the Defendant puts himself on the Country.

Dated

Similiter.

And the Attorney-General of our Lord the King as to the plea of the Defendant herein whereof he has put himself upon the Country saith that he doth the like.

Therefore let a Jury come.

Dated

To the Defendant,
his Solicitor or Agent.

**Pleadings on an Information for Damages for Breach of a Contract
to purchase Goods.**

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

The 18th day of February in the year of our Lord 1891.

Middlesex { Sir RICHARD EVERARD WEBSTER Knight the Attorney-General
to Wit. } for Our Sovereign Lady the Queen who prosecutes for Her Majesty in this behalf informs the Court that by a contract in writing dated the 23rd day of October 1889 and made between Her Majesty's Principal Secretary of State for War on behalf of Her Majesty and the Defendants, the Defendants agreed to purchase from the said Secretary of State who agreed to sell to the Defendants 1200 tons of steel scrap then lying at the Royal Arsenal Woolwich and there to be delivered by the said Secretary of State to the Defendants at the price of 75s. 3d. per ton and upon the terms that the same should be taken by the Defendants with all faults and errors and without question on their part and be removed by them from the Royal Arsenal Woolwich on or before the 15th March 1890 and as to any part of the said 1200 tons of steel scrap not removed by the Defendants prior thereto that the same should be forfeited and any loss arising in default on the sale thereof by the said Secretary of State should be charged against and paid by the Defendants to the said Secretary of State. And the said Attorney-General who prosecutes as aforesaid further informs the Court that the said Secretary of State delivered and the Defendants accepted delivery of 66½ tons part of the said 1200 tons of steel scrap and removed and paid for the same as provided by the said contract and although the said Secretary of State was always ready and willing to deliver the residue thereof to wit 1133½ tons of steel scrap and to permit the Defendants to remove the same from the said Arsenal whereof the Defendants had notice and the time limited for removing and paying for the same as aforesaid elapsed yet the Defendants did not remove the said 1133½ tons of steel scrap from the Arsenal or pay for the same but on the contrary refused to do so and wholly repudiated their contract with respect thereto and thereupon the said 1133½ tons of steel scrap were in accordance with the said contract sold as in default by the said Secretary of State for War at a loss

of £849 18s. arising on such sales within the intent and meaning of the said contract and according to the particulars hereunder specified namely—

Value of steel scrap at the contract price—	£	s.	d.
Viz. 1133½ tons at 75s. 3d. per ton	4265	14	8
Sold in default of the Defendants as under—			
1042 tons at 60s. 6d. per ton	3152	1	0
91½ tons at 57s. 6d. per ton	263	15	8
		3415	16 8
		<u>£849</u>	<u>18 0</u>

Wherefore the said Attorney-General prayeth the consideration of the Court to the premises and that the said sum of £849 18s. (together with interest thereon at 5 per cent. per annum from the 1st day of January 1891) may be adjudged to Her Majesty.

(Signed) RICHARD E. WEBSTER.

Amended Plea.

The 19th day of March 1891.

A. B. & Co. at the suit of Sir Richard Everard Webster Knight Her Majesty's Attorney-General. By Information.	}	A. B. & Co. by Messrs. their Solicitors for a plea in this behalf say 1. That they never were indebted as alleged.
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Replication.

The 4th day of May 1891.

As to the plea of the said A. B. & Co. by them pleaded to the said Information Her Majesty's said Attorney-General on behalf of Her Majesty joins issue thereon.

Delivered the day above written by Hare & Co. Agents to the Solicitor for the affairs of Her Majesty's Treasury.

Pleadings on an Information for Damages for Breach of a Contract of Service.

	<i>Indorsement of Subpœna.</i>	£	s.	d.
For the recovery of.....		159	0	0
for damages due from you to His Majesty for breach of an agreement dated 27th January 1902 and made between you and His Majesty's Principal Secretary of State for the War Department.				
Less the sum of		28	9	3
due to you from the said Secretary of State.				
	Balance due.....	£130	10	9

Information.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

The 17th day of November in the year of Our Lord 1903.

Middlesex, } Sir ROBERT BANNATYNE FINLAY, Knight, the Attorney-General
to Wit. } for our Sovereign Lord the King who prosecutes for His Majesty
in this behalf informs the Court as follows that by an Agreement dated the
27th day of January 1902 and made between His Majesty's Principal Secretary
of State for the War Department and the Defendant A. B. to which said
Agreement the Attorney-General refers the Court, the Defendant agreed to
proceed to Hong Kong for duty there as a Temporary Surveyor on Engineer
services for a term of not less than three years from the date thereof if required
by the said Secretary of State so long to serve at a salary of twenty-five
shillings a day for seven days a week to run from the time of his arrival at
Hong Kong till the termination of his services and it was by the said Agreement
further provided that if the Defendant should fail to serve as agreed for the
said period of three years if required he should pay to the said Secretary of
State by way of liquidated damages the sum of one pound for every day until
the termination of the said period of three years on which the said Secretary of
State should be unable to procure the services of some other competent person
and the Attorney-General further informs the Court that the Defendant duly
proceeded to Hong Kong in accordance with the said Agreement arriving at
Hong Kong on March 21st 1902 and from that date performed his duties there
under the said agreement until the 9th December 1902 when the Defendant
though he was required by the said Secretary of State to continue his services
as such Temporary Surveyor as aforesaid for the said term of three years yet
he the Defendant nevertheless wrongfully quitted the service of the said
Secretary of State and refused further to serve the said Secretary of State as
such Temporary Surveyor as aforesaid and the Attorney-General further
informs the Court that the said Secretary of State by reason of such refusal
was for a period of 159 days unable to procure the services of some other
competent person in lieu of the Defendant and that the Defendant is liable to His
Majesty in respect of such period under the said Agreement in the sum of £159.

And the said Attorney-General who prosecutes as aforesaid further informs
the Court that by the said Agreement of 27th day of January 1902 and made
between His Majesty's Principal Secretary of State for the War Department
and the Defendant A. B., the Defendant agreed to proceed to Hong Kong for
duty there as a Temporary Surveyor on Engineer services for a term of not less
than three years from the date thereof if required by the said Secretary of
State so long to serve at a salary of twenty-five shillings a day for seven days
a week to run from the time of his arrival at Hong Kong till the termination of
his services and the Attorney-General further informs the Court that the said
Defendant duly proceeded to Hong Kong in accordance with the said Agree-
ment arriving at Hong Kong on March 21st 1902 and from that date performed
his duties there until the 9th December 1902 when the Defendant though he
was required by the said Secretary of State to continue his services as such
Temporary Surveyor as aforesaid for the said term of three years yet never-
theless he the Defendant wrongfully quitted the service of the said Secretary of
State and refused further to serve the said Secretary of State as such Temporary

Surveyor as aforesaid and the Attorney-General further informs the Court that by reason of such refusal His Majesty has sustained damage in the sum to wit of £159 which sum the Defendant is liable to make good to His Majesty.

The Attorney-General claims on behalf of His Majesty the sum of £130 : 10s. 9d. being the said sum of £159 less the sum of £28 : 9s. 3d. which the Attorney-General who prosecutes as aforesaid admits to be due to the Defendant from His Majesty. Wherefore the said Attorney-General prayeth the consideration of the Court to the premises and that the said sum of £130 : 10s. 9d. may be adjudged to His Majesty.

(Signed) R. B. FINLAY.

Plea.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

The 7th day of January in the year of Our Lord 1904.

A. B. by C. D. his Solicitor says:—

1. He never agreed as alleged.
2. And for a second plea he says that he is not guilty of the alleged or any breach.
3. And for a third plea he says that he was induced to enter into the agreement alleged by material misrepresentations made by Mr. E. F. and Mr. C. D. being the persons who on behalf of and acting for His Majesty's Principal Secretary of State for the War Department deputed thereto by him negotiated and made the said agreement by reason whereof the Defendant became and was entitled to rescind the same which he accordingly did on the 9th day of December 1902.
4. And for a fourth plea the Defendant says that the said agreement was entered into under a mutual mistake of fact forming the basis of the said agreement and going to the root of it which entitled him to rescind the contract and he accordingly did so on the 9th day of December 1902.

Particulars under paragraphs 3 and 4.

[Particulars of alleged misrepresentations and mistake set out.]

(Signed) C. D.

Replication.

The 5th day of February in the year of Our Lord 1904.

As to all the pleas of the said A. B. by him pleaded to the said Information His Majesty's said Attorney-General on behalf of His Majesty joins issue thereon.

Therefore let a Jury come.

(Signed) HENRY SUTTON.

Delivered by the Treasury Solicitor (L. C. B.) 276 Royal Courts of Justice Strand London Solicitor for the Informant.

To the Defendant
or his Solicitor.

Information for the Recovery of Rent, &c. from a Tenant.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

The day of in the year of our Lord One thousand
eight hundred and .

Middlesex } Sir CHARLES RUSSELL Knight the Attorney-General of our
to wit. } Sovereign Lady the Queen who prosecutes for Her Majesty in this
behalf informs the Court that A. B. is indebted to Her Majesty in the sum to
wit of £163: 6s. 5d. under a written Agreement of Tenancy dated the 22nd day
of April 1885 and made between Her Majesty's Principal Secretary of State for
the War Department of the one part and the said A. B. of the other part
whereby the said A. B. agreed to become the tenant of the messuages and lands
in the parish of X. in the county of Y. described in the schedule thereto from
the 25th March 1885 and thenceforth from year to year and to pay to the said
Secretary of State the yearly rent of £118: 1s., and to pay all tithe rent-charges
charged upon the said premises, the said sum of £163: 6s. 5d. consisting as to
£147: 11s. 3d. part thereof of five quarters arrears of the said rent the last
payment thereof being due on the 24th June 1892, and as to the sum of
£15: 15s. 2d., the remainder thereof, of sums properly paid by the said Secretary
of State on account of three half-yearly payments of the tithe rent-charge
charged upon the said premises the last payment thereof being due on the
1st day of April 1892 in respect of which sum of £15: 15s. 2d. the said Secretary
of State has served notice of the liability of the said A. B. to pay the same under
the said agreement upon the owner of the said tithe rent-charge as required by
the Tithe Act, 1891.

Wherefore the said Attorney-General prayeth the consideration of the Court
in the premises and that the said sum of money so due amounting to
£163: 6s. 5d. may be adjudged to Her Majesty.

Information of Intrusion.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

The day of A.D. .

Between HER MAJESTY'S ATTORNEY-GENERAL (on behalf of Her
Majesty) - - - - -

and

A. B., C. D. and E. F. - - - - -

Informant

Defendants.

[Compare the form above, p. 179.]

Middlesex } Her Majesty's Attorney-General on behalf of Her Majesty sues
to wit. } A. B., C. D. and E. F. by virtue of a writ of subpoena issued out
of this Court on the day of in the year and gives the Court to

understand and be informed that certain lands messuages and premises in the said writ mentioned ought to be in the hands and possession of Her Majesty in right of her Crown of England;

Nevertheless the Defendants contriving the disinherison of Her Majesty with force and arms to, in, and upon her possessions entered intruded and made ingress, and have kept and are still keeping Her Majesty out of the possession thereof; and Her Majesty's Attorney-General on behalf of Her Majesty claims possession of the said lands messuages and premises.

And Her Majesty's said Attorney-General further gives the Court to understand and be informed that the Defendants have kept Her Majesty from the possession of the said lands messuages and premises from the 15th day of April 1871 down to the present time and have during that time or some part thereof been in receipt of the issues rents and profits and in the beneficial use and occupation thereof; whereby Her Majesty was deprived of the issues rents and profits and the beneficial use and occupation thereof and was prevented from letting the same; and the said Attorney-General on behalf of Her Majesty claims the said issues rents and profits with interest on the same at the rate of 5 per centum per annum from the receipt of each till judgment and also an account of the same and compensation for the loss of the said beneficial use and occupation.

Wherefore Her Majesty's Attorney-General who for Her Majesty in this behalf prosecuteth prays the consideration of the Court here in the premises and that due process may be awarded against the Defendants in this behalf to make them answer to Her Majesty touching the premises aforesaid.

[NOTE.—This information combines the claims for the removal of the intruders and for the recovery of profits and damages. But as to this see above, p. 183.]

Information to obtain possession of Choses in Action belonging to an Enemy Government (in the nature of an Information of Devenerunt).

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Sir RICHARD EVERARD WEBSTER, Baronet, Knight Grand Cross of the most distinguished Order of St. Michael and St. George, Her Majesty's Attorney-General on behalf of Her Majesty the Queen informs the Court as follows:—

1. The Defendant The A. B. Company Ltd. is a company incorporated under the Companies Acts 1862 to 1890 and has its registered offices at
2. The Government of is the registered holder of £ or some other amount in shares in the said Company.
3. The Government of is now at war with the Queen.
4. The Government of Her Majesty is entitled to seize and control the said shares as property of an enemy Government so as to prevent their being made use of by the Government of for raising funds for the prosecution of the said war.
5. It is of great importance that an injunction should be obtained to prevent the said Company registering any transfer of the said shares or any of them or permitting any dealing therein by any one acting in its behalf.
6. The Defendant Company has in its possession books, documents and correspondence relating to the matters aforesaid.

The Attorney-General on behalf of Her Majesty claims:—

1. A declaration that Her Majesty is entitled to the said shares and to the control thereof.

2. An injunction to restrain the said Defendant Company from registering any transfer of the said shares or any of them or permitting any dealing therein by the Government of or by any one acting on its behalf.

3. Discovery and inspection.

4. Such further and other relief as the Attorney-General on behalf of Her Majesty may be entitled to.

(Signed) RICHARD E. WEBSTER.

Proceedings on a Writ of Extent.

Attorney-General's authority to proceed by Writ of Immediate Extent.

I hereby authorize the institution of proceedings by Writ of Immediate Extent against Sir A. B. of in the County of , for the recovery of the sum of £ , being moneys standing in Bank at to the account of the Paymasters of Her Majesty's ships [*or in respect of the sum of £ moneys due to the Crown*].

Dated , 1897.

(Signed) RICHARD E. WEBSTER,
Attorney-General.

Affidavit of Debt and Danger.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

I, X. of make oath and say as follows.

1. I depose to this affidavit from information acquired by me as such as aforesaid.

2. Sir A. B. of in the County of is justly and truly indebted to Her Majesty in the sum of £ .

3. There is now or was at the date of the suspension hereinafter mentioned deposited in the Bank of C. D. at in the said County of the said sum of £ standing to the following credits:—[*names of various Government officials*].

4. The said Bank has recently suspended payment. The said Sir A. B. was and is as I am informed and believe a partner in the said banking firm.

5. From enquiries I have made I have ascertained and believe that by reason of claims being made upon the said Sir A. B. by the creditors of the said Bank he is unable to meet his liabilities as such partner and is in a state of insolvency and I am advised and believe that the debt so due to Her Majesty as aforesaid will be lost unless some more speedy course than the ordinary method of proceeding be forthwith had and taken to recover the same on behalf of Her Majesty.

Sworn by the deponent X. }
at in the County }
of this day of }
18 . }
Before me . }

X.

Fiat of Judge for the issue of a Writ of Immediate Extent.

Upon reading this affidavit let a writ or writs of Immediate Extent issue against the said Sir A. B. his estate and effects for the recovery of the said sum of £ with the usual proviso.

Dated .

(Signed) H. HAWKINS.

[NOTE.—The “usual proviso” is that the sheriff should not sell the extended property until commanded by the Crown. See the last clause of the writ below.]

Writ of Extent.

IN THE HIGH COURT OF JUSTICE.

Queen’s Bench Division.

(Queen’s Remembrancer.)

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith. To the Sheriff of the County of Greeting. Whereas by an Affidavit of X. sworn on the day of 1897 and filed in the Office of Our Remembrancer in the Queen’s Bench Division of Our High Court of Justice it appears that Sir A. B. of in the County of

Knight Banker is justly and truly indebted to Us in the sum of £ and that the same is in danger of being lost to Us unless some method more speedy than the ordinary course of proceedings at law be had. Now We being desirous to be satisfied the said sum of £ so due to Us with all the speed We can (as is just) do command you that you omit not entering any liberty of your Bailiwick and take the said Sir A. B. by his body wherever he shall be found in your Bailiwick and keep him safely and securely in prison till We shall be fully satisfied the said debt and that as well on the oaths of good and lawful men of your Bailiwick as by the oath and testimony of any other good and lawful men by whom the truth may the better be known as by all other lawful means you do diligently enquire what lands and tenements and of what yearly value the said Sir A. B. now has in your Bailiwick and what goods and chattels and of what sorts and prices and what debts credits specialties and sums of money the said Sir A. B. or any person or persons to his use or in trust for him now hath or have in your said Bailiwick and that all and singular such goods and chattels lands and tenements debts credits specialties and sums of money in whosoever hands they now are you do diligently appraise and extend on the oaths of the said good and lawful men and do take and seize the same into Our hands there to remain till We shall be fully satisfied the said debt according to the form of the Statute made for recovering of Our debts of this nature and lest this Our command should not be fully executed We further command and empower you by these presents to summon before you such persons as you shall think proper and carefully examine them in the premises and that you do distinctly and openly notify to the Judges of the Queen’s Bench Division of Our High Court of Justice on the day of instant in what manner you shall have executed this Our command and that you then have there this Writ (provided that what goods and chattels you shall seize into Our hands by virtue hereof you do not sell or cause to be sold until We shall otherwise command you).

Witness the Right Honourable Hardinge Stanley Baron Halsbury Lord High Chancellor of Great Britain at Westminster the day of in the year of our Lord 18 .

Notice to produce at Inquisition.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between THE QUEEN
and
SIR A. B.

Take notice that you are hereby required to produce and shew to the Sheriff of on the Inquisition to be held at in the said county of on instant at in the noon all deeds books papers and other writings and documents in your custody, possession or power, containing any entry relating to all lands and tenements and of what yearly value and all goods and chattels debts and sums of money which you possess or which are held in trust for you or in which you have any interest whatever and also all your pass books showing your account with any bank or banks with which you have now an account or have had an account within the last six months.

Dated .

Return to Writ of Extent.

By virtue of this writ to me directed I have taken the within-named A. B. and C. D. and keep them safely and securely in prison as within I am commanded, but the said E. F. is not found in my bailiwick. The residue of the execution of the writ appears by the Inquisition hereunto annexed.

The Answer of

G. H., Esq.

Sheriff.

(Stamp 2s. 6d.)

(Seal.)

Another Form.

As directed I have not taken the within-named Sir A. B. The residue of the execution of the writ appears in the Inquisition annexed.

The Answer of

K. L.

Sheriff of .

(Stamp 2s. 6d.)

(Seal.)

[NOTE.—As to the present practice of not taking the body of the extendee, see above, p. 194.]

Inquisition.

County } An Inquisition indented taken at in the said County
of } the day of in the year of the reign of our
to wit. } Sovereign Lady Victoria by the Grace of God of the United
Kingdom of Great Britain and Ireland Queen Defender of the Faith &c. before
me K. L. Sheriff of the said County by virtue of Her Majesty's Writ of Extent
to me directed and to this Inquisition annexed on the oaths of [*here follow the
names of the twelve jurors*] honest and lawful men of my Bailiwick who being
chosen tried and sworn on their oath say that Sir C. B. Knight in the said
Writ named as Sir A. B. Knight is possessed of the goods and chattels following
that is to say:—An absolute interest in the following Stocks Shares Securities
and interests viz.:—[*here follows a list of certain reversions*] Also Carriages and
Horses Director's Fees Balance at Bankers and leasehold interest in all that
dwelling-house or premises known as Z. held on a lease expiring on the
nineteenth day of August 1898 And further that he the said Sir C. B. is
possessed of or entitled to a present life interest in the goods chattels and
effects following viz.:—(a) The goods chattels furniture and effects situate
and being in or about Y. Court in the said County (b) the sum of £ part
of a Mortgage of £ secured on Y. Court aforesaid (c) half the income
of a sum of £ invested at 3 per cent. And further that the said Sir C. B.
is possessed of or entitled to a reversionary life interest contingent on a life
aged 30 in the goods chattels and effects following viz.:—[*here follows a list*] as
of his own goods and chattels And the said Jurors do appraise and value the
same at the sum of £ all which said goods and chattels I the said Sheriff
have seized and taken into Her Majesty's hands And the Jurors aforesaid
upon their oath aforesaid further say that the said Sir C. B. is seized of or
entitled to a present life interest in the following properties viz.:—(a) All that
freehold estate and hereditaments known as Y. Court in the Parish of
consisting of a Mansion House and Offices situate upon land about in
extent bounded subject nevertheless to a Mortgage or Mortgages for
the aggregate sum of £ (b) a freehold plot of ground containing
(c) two freehold dwelling-houses situate and being respectively both in
the Parish of aforesaid And further that he the said Sir C. B. is
possessed of or entitled to a reversionary life interest in all that freehold
property known as in the Parish of in the County of all
of the clear yearly value of £ in all issues beyond reprises which I the
said Sheriff have seized and taken into Her Majesty's hands And that he the
said Sir C. B. has not any other or more goods or chattels debts credits
specialties or sums of money or any other or more lands or tenements in my
Bailiwick to the knowledge of the said Jurors which can be extended appraised
or seized into Her Majesty's hands In witness whereof we the said Jurors
have hereunto set our hands and seals.

[Signed and sealed by the twelve jurors and the sheriff.]

Supplemental Inquisition.

County of } An Inquisition indented taken at in the said County the
 } day of in the year of the reign of our Sovereign
 } Lady Victoria by the Grace of God of the United Kingdom of Great
 } Britain and Ireland Queen Defender of the Faith &c. before me K. L. Sheriff
 } of the said County by virtue of Her Majesty's Writ of Extent to me directed
 } and to this Inquisition annexed on the Oaths of [*here follow the names of the*
 } *twelve Jurors*] honest and lawful men of my Bailiwick who being chosen tried
 } and sworn on their oath say that by an Inquisition dated the day of
 } 18 duly taken it was found that Sir C. B. Knight in the said Writ named as
 } Sir A. B. Knight was possessed of certain goods chattels and effects in the said
 } Inquisition specially mentioned And further that it has been found since the
 } date of such last mentioned Inquisition that the goods chattels and effects
 } therein named do not include the whole of the goods chattels and effects of
 } which the said Sir C. B. is possessed and they further say that in addition to
 } such goods chattels and effects the said Sir C. B. is possessed of the goods and
 } chattels following that is to say certain wine in the cellars at Y. Court in the
 } County of as of his own goods and chattels And the said Jurors do
 } appraise and value the same at the sum of Two hundred and ninety-five pounds
 } and ten shillings all which goods and chattels I the said Sheriff have seized and
 } taken into Her Majesty's hands And that the said Sir C. B. has not any other
 } or more goods or chattels debts credits specialties or sums of money or any other
 } or more lands or tenements other than those mentioned in the hereinbefore
 } referred to Inquisition in my Bailiwick to the knowledge of the said Jurors
 } which can be extended appraised or seized into Her Majesty's hands In witness
 } whereof we the said Jurors have hereunto set our hands and seals.

[*Signed and sealed by the twelve jurors and the sheriff.*]

Memorandum of Appearance and Claim.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between THE QUEEN - - - - - Plaintiff

and

SIR C. B. - - - - - Defendant

claiming goods &c. under a Writ of Extent issued against the said Defendant.

M. & N. Solicitors for Sir C. B. of in the County of appear and claim
 all and singular the Stocks, shares, and securities, also all goods chattels and
 effects lands tenements debts specialties and sums of money taken and seized
 into Her Majesty's hands by the Sheriff of under and by virtue of a
 Writ of Extent issued the day of 18 against the said Sir C. B. and
 which are more particularly set out in the Inquisition and Return of the said
 Sheriff to the said Writ.

Dated the day of 18 .

(Signed) M. & N.

R. Street, S.

Whose address for service is aforesaid.

Agents for O. & P. of
 Solicitors for the said Defendant,

Pleas to Writ of Extent.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between THE QUEEN - - - - - Plaintiff
 and
 SIR C. B. - - - - - Defendant

claiming Goods &c. under a Writ of Extent issued against the said Defendant.

PLEAS.

1. The said Sir C. B. says that at the time of issuing and of the teste of the Writ of Extent dated 18 under which the stocks shares and securities and also the goods chattels and effects lands tenements debts credits specialties and sums of money of the said Sir C. B. (hereinafter called the extended property) have been taken and seized into Her Majesty's hands by the Sheriff of under and by virtue of the said Writ and particulars of which extended property are set out in the Inquisition and Return of the said Sheriff to the said Writ he the said Sir C. B. was not indebted to Her Majesty the Queen in the sum of £ or any part of such sum or in any sum whatever.

2. The said Sir C. B. further says and complains that he ought not to have been troubled and vexed by the seizure of the extended property under the said Writ because in the said Writ it is recited that by the Affidavit mentioned therein it appears that Sir A. B. (and not the Defendant) [*the Affidavit and Writ inverted two of the Christian names of the Defendant*] was at the date of the said Writ indebted to Her Majesty in the said sum and by the said Writ the said Sheriff was commanded to inquire what lands and tenements and of what yearly value the said Sir A. B. then had in the Bailiwick of the said Sheriff and what goods and chattels and of what sorts and prices and what debts chattels specialties and sums of money the said Sir A. B. or any person or persons to his use or in trust for him then had in the said Bailiwick and to take and seize into Her Majesty's hands all and singular the said goods chattels lands and tenements debts credits specialties and sums of money and the said Writ of Extent and Inquisition thereon and return thereto are and each of them is insufficient and bad in law and the Defendant the said Sir C. B. has no occasion and is not bound to answer to the same.

3. The said Sir C. B. prays that pursuant to the statute 33 Hen. VIII. c. 39 and all other statutes in that behalf he may be acquitted and discharged of the said alleged debt and that the hands of Her Majesty may be amoved from the possession of the extended property and every part thereof and that the said Sheriff of and all future Sheriffs of the said County may be discharged of the extended property and every part thereof and that he may be dismissed from this Court.

[Signed by Counsel.]

Delivered 18 by Defendant's Solicitors.

Replication.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between THE QUEEN - - - - - Plaintiff

and

SIR C. B. - - - - - Defendant

claiming Goods &c. under a Writ of Extent issued against the said Defendant.

REPLICATION.

And Sir R. E. W., Knight, Her Majesty's Attorney-General on behalf of Her Majesty as to the plea of the Defendant by him above pleaded in law says that by reason of anything by the said Defendant in the said plea alleged the said Defendant ought not to be acquitted and discharged of the said debt of £ and the hands of Her Majesty ought not to be amoved from the possession of the said extended property or any part thereof and that the said Sheriff of and all future Sheriffs of the same County ought not to be discharged of the said extended property or any part thereof and that the said Defendant ought not to be dismissed from the Court. Because protesting that the said plea of the said Defendant and the matters therein contained in manner and form as the same are above pleaded and set forth are wholly insufficient in law to amove the hands of Her Majesty from the possession of the said extended property, yet for replication in this behalf the said Attorney-General on behalf of Her Majesty says that at the time of the issuing of the said Writ of Extent the Defendant was indebted to Her Majesty in the said sum of £ and this the Attorney-General on behalf of Her Majesty prays may be inquired of by the Country.

Order to amend a Writ of Extent and strike out a Plea.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Master

Between THE QUEEN

and

SIR C. B.

Upon hearing Counsel for the Plaintiff and the Defendant and upon reading the affidavit of filed the It is ordered that the Writ of Extent issued the be amended by the substitution of the words Sir C. B. for Sir A. B. and that the second plea pleaded to the said Writ be struck out and that the costs of this application be costs in the cause.

Fit for Counsel

Dated

[NOTE.—This and other Orders under Extents have been made by Masters in Chambers, but in the author's opinion they have no power to make them; the proper person is the Judge in Chambers. See above, p. 217.]

Order by Consent withdrawing Sheriff.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Mr. Justice Vacation Judge in Chambers.

Between THE QUEEN

and

SIR C. B.

Upon hearing the Solicitor for the Applicant on behalf of Her Majesty and for the Defendant

It is by consent ordered that upon payment into Court to the credit of this action [*Quære*, suit] of two sums of £ and £ the Sheriff of do withdraw from possession of and of the furniture and effects horses and carriages and wine now upon the said premises.

Dated .

Order staying Proceedings and directing Payment out of Court.

[Title as of the Order on p. 277. See note thereto.]

Upon hearing the Solicitors for both parties

It is ordered that on payment of the sum of £ to Her Majesty's Paymaster-General on behalf of Her Majesty the sum of £ in Court to the credit of this action [*Quære*, suit] may be paid out to Solicitors for the Defendant and that all further proceedings arising from the two Writs of Extent dated respectively be stayed.

Dated .

Rule to set aside a Writ of Extent.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

. day the day of .

THE QUEEN

against

A. B., C. D. and E. F.

Upon the Motion of Mr. of Counsel on behalf of the above named A. B., C. D. and E. F. and upon reading the Affidavit of G. H. sworn this day It is ordered by the Court that Her Majesty's Attorney-General do on day the day of instant shew Cause why the Writ of Extent issued against the said A. B., C. D. and E. F. should not be set aside and the said A. B. and C. D. now in prison under the custody of the Sheriff of the County of be discharged out of such custody on the ground that the Costs of a Petition of Right cannot be the subject of a Writ of Extent and on the further ground that the said Writ of Extent is contrary to the law And it is further ordered that service of this Rule be made on the Solicitor for the affairs of Her Majesty's Treasury.

(Signed)

K. L.,

Q. R.

Conveyance by King's Remembrancer of Lands sold under a Writ of Extent.

THIS INDENTURE made the day of &c. Between M. M. Esq. His Majesty's Remembrancer of the Court of Exchequer of the one part and A. B. of of the other part Whereas by an Act of Parliament made and passed in the twenty-fifth year of the reign of His present Majesty King George the Third intituled "An Act for the more easy and effectual sale of lands tenements and hereditaments of Crown debtors or of their sureties" It was declared and enacted that it should and might be lawful to and for His Majesty's Court of Exchequer and the same Court was hereby authorised on the application of His Majesty's Attorney-General in a summary way by motion to the same Court to order that the right title estate and interest of any debtor to His Majesty his heirs and successors and the right title estate and interest of the heirs and assigns of such debtor in any lands tenements or hereditaments which had been or should thereafter be extended under and by virtue of any Writ of Extent or *diem clausit extremum* or so much thereof as should be sufficient to satisfy the debt for which the same should have been so extended should be sold in such manner as the said Court should direct and that when a purchaser or purchasers should be found the conveyance of the lands tenements or hereditaments so decreed to be sold should be made to the purchaser or purchasers by His Majesty's Remembrancer in the said Court of Exchequer or his deputy under the direction of the said Court by a Deed of Bargain and Sale to be inrolled in the same Court and that from and after the making of such conveyance and the inrolment thereof as aforesaid the Bargainee or Bargainees in such conveyance and his or their heirs executors administrators and assigns should have hold and enjoy the lands tenements and hereditaments therein comprised for his her or their own respective use and benefit not only against the extent of the Crown but also against such debtor of the Crown or the surety or sureties for such debtor and all persons claiming under such debtor or the surety or sureties unless by a title paramount to and available in law against such extent as aforesaid And Whereas by a Writ of Extent bearing date the day of in the year issued out of the Court of Exchequer against C. D. for the sum of £ the Sheriff of was commanded to enquire what lands and tenements the said C. D. then had in his Bailiwick and to seize the same into His Majesty's hands And Whereas by an Inquisition taken the day of in the said year before the Sheriff of it was found (amongst other things) that the said C. D. was on the day of seized in his demesne as of fee of and in the hereinafter more particularly mentioned and described and intended to be hereby bargained and sold and the same premises were seized by the said Sheriff into His Majesty's hands And Whereas by an order of the said Court bearing date the day of in the said year reciting the said Inquisition It was ordered (amongst other things) that all the right title estate and interest of the said C. D. in all the lands tenements and hereditaments in the said County of seized into His Majesty's hands by the said Inquisition should be forthwith sold before the Deputy Remembrancer of that Court together or in parcels for the best price or prices that could be gotten for the same and at such times and places as the said Deputy Remembrancer should direct and that the purchase money should be paid into Court And Whereas at a public sale held at before His Majesty's Remembrancer on the day of last past the said A. B. became the purchaser of the said premises (being lot in the Particulars of

sale mentioned) for the price or sum of £ And Whereas His Majesty's Remembrancer by his report bearing date the day of last certified that the said A. B. did at the said sale bid the sum of £ for such part of the said estates comprised in lot No. as the said lot was described in the plan and particulars of the said estate remaining in his Office and also in the plan and Schedule to the said report annexed on the conditions to the said particulars and Schedule subjoined and no other person having bid so much for the premises comprised in the said lot No. he had approved of the said A. B. to be the purchaser thereof at the said sum of £ on the terms of the said bidding And Whereas by an order of the said Court bearing date the day of last the said A. B. was confirmed the purchaser of the premises comprised in the said lot No. at the said sum of £ upon the terms of his said bidding in the said Report and Order mentioned Now this Indenture witnesseth that for and in consideration of the said sum of £ of lawful money of the United Kingdom of Great Britain and Ireland current in Great Britain paid into the Bank of England to the account of and with the privy of the Accountant-General of the Court of Exchequer by the said A. B. pursuant to an order of the said Court bearing date the day of being the full consideration money for the absolute purchase of the hereinafter mentioned to be bargained and sold the receipt whereof His Majesty's Remembrancer doth hereby acknowledge and thereof release and for ever discharge the said A. B. his heirs executors and administrators by these presents He the said M. M. by virtue of the power and authority contained in the said Act Hath bargained and sold and by these presents Doth as much as in him lie and he lawfully may bargain and sell unto the said A. B. his heirs and assigns All that &c. And all ways &c. and the Reversion &c. to have and to hold the said hereby bargained and sold or expressed or intended so to be and every part thereof with the appurtenances unto the said A. B. his heirs and assigns To the only proper use and behoof of the said A. B. his heirs and assigns for ever.

IN WITNESS, &c.

Writ of Diem Clausit Extremum.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

EDWARD THE SEVENTH, &c. To the Sheriff of the County of Greeting. Whereas by an affidavit of A. B. sworn on the day of 19 and filed in Our Remembrancer's Department in the King's Bench Division of Our High Court of Justice it appears that C. D. of in the County of died on the day of last and that the said C. D. was before and at the time of his death justly indebted to Us in the sum of £ , which sum of £ still remains due and unpaid to Us. Now We being desirous to be satisfied the said sum of £ so due to Us with all the speed We can (as is just) do command you that you omit not entering any liberty of your Bailiwick, on the oaths of good and lawful men of your Bailiwick as by the oath and testimony of any other good and lawful men by whom the truth may the better be known as by all other lawful means to enquire diligently on what day and year and where the said C. D. died and what goods and chattels and of what sorts and

prices and what debts, credits, specialties and sums of money the said C. D. or any other person or persons for his use or in trust for him had in your Bailiwick on the day he died and to whose hands such goods and chattels, debts, credits, specialties and sums of money came after the death of the said C. D. and in whose hands the same now are, and what lands and tenements and of what yearly values the said C. D. had in your Bailiwick on the day he died [*see note*], and who was seized of any lands or tenements in your Bailiwick for his use or in trust for him on the day he died, and who hath had and received the rents, issues and profits of such lands and tenements from the death of the said C. D. to this time, and who now has and receives the same, and that all and singular such goods and chattels, lands and tenements, debts, credits, specialties and sums of money, in whosoever hands they now are, you do diligently appraise and extend [*continue as in Writ of Extent*, p. 272].

[NOTE.—Where the Crown debt is a charge on the debtor's lands (see pp. 150, 158), it would seem that the inquiry ought to be as to the lands of which the debtor was seized at the date when the charge attached.]

Pleadings on a Scire Facias.

Writ.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith To A. B. of in the County of C. D. of in the County of and E. F. of in the County of Greeting Whereas you the said A. B., C. D. and E. F. by Bond or Writing obligatory sealed with your Seal made at Westminster in the County of Middlesex dated the third day of September in the year of our Lord One thousand eight hundred and eighty-four became jointly and severally bound to Us in the sum of Five hundred pounds of lawful money of Great Britain payable at a day past which said sum of money you have not nor hath either of you yet paid or caused to be paid to Us as We are informed And We being desirous to be satisfied the same with all the speed We can (as is just) do command you that within fourteen days from the service of this Writ including the day of service you cause an appearance to be entered for you in the Queen's Bench Division of Our High Court of Justice and take notice that in default of your so doing Judgment will be signed against you forthwith and execution issued at the expiration of Fourteen days from the day of signing such judgment for the said sum of Five hundred pounds together with costs Witness the Right Honourable Hardinge Stanley Baron Halsbury Lord High Chancellor of Great Britain at Westminster the Twenty-fourth day of March in the year of our Lord One thousand eight hundred and ninety.

Take notice that if you appear in due time according to the exigency of this Writ you are required to plead thereto in Fourteen days from the date of such appearance including the day of such appearance and in default Judgment may be signed and execution issued forthwith The plea must be delivered to the Official Solicitor to the Supreme Court of Judicature issuing out this Writ.

Plea of A. B.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

A. B. and others ats. THE QUEEN.	}	The Defendant A. B. by G. H. his Solicitor says that the said Bond was and is subject to a condition thereunder written whereby after reciting that the custody of the person and the regulation and government of K. L. residing at the X. Asylum in the City of Y. a person of unsound mind and also the custody regulation occupation disposition and receipt of his estate had been committed and granted to the above bounden A. B. the said K. L. being unable to govern himself or to manage his estate during the continuance of his unsoundness of mind the condition of the said Bond was declared to be such that if the said A. B. should yearly or oftener if thereunto required make a just and true account of all and singular the rents issues and profits of the real estate of the said K. L. and also of his personal estate and the profits thereof as then were or thereafter should come to his hands custody or possession or which he might receive out of or concerning the said estate and should carefully observe perform and keep the orders and directions of the Lord Chancellor of Great Britain Lord Keeper Lords Commissioners for the custody of the Great Seal of Great Britain or the Lords Justices or other the person or persons for the time being entrusted by the Queen's Sign Manual or her successors with the care and commitment of the custody of the persons and estates of idiots lunatics and persons of unsound mind or any of them for the time being made or thereafter to be made touching or concerning the said K. L. and his estate and touching all such monies as should yearly remain due upon the foot of the account duly taken by one of the Masters in Lunacy and filed in the office for that purpose appointed and should be careful to see the houses buildings and structures of the said K. L. well and sufficiently repaired and so kept and maintained during the continuance of the said grant and should carefully preserve and keep all the deeds evidences and writings touching the manors messuages lands tenements hereditaments and estates of the said K. L. as then or thereafter should come to his hands custody or possession and should carefully provide for the person of the said K. L. and for his family if any were or should be during the continuance of the said grant and should in all things demean himself as a careful and faithful Grantee or Committee of the person and estate of the said K. L. that then the said obligation should be void And before this suit this Defendant performed and fulfilled the said condition on his part and did yearly and as often as thereunto required make a just and true account of all and singular the rents issues and profits of the real estate of the said K. L. and also of his personal estate and the profits thereof as then were or thereafter came to his hands custody or possession or which he received out of or concerning the said estate and did carefully observe perform and keep the orders and directions of the Lord Chancellor of Great Britain Lord Keeper Lords Commissioners for the custody of the Great Seal of Great Britain or the Lords Justices or other the person or persons for the time being entrusted by the Queen's Sign Manual or her successors with the care and commitment of the custody of the persons and estates of idiots lunatics and persons of unsound mind or any of them for the time being made or thereafter made touching or concerning the said K. L. and his estate and touching all such monies as yearly remained due upon the foot
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of the accounts duly taken by one of the Masters in Lunacy and filed in the office for that purpose appointed and was careful to see the houses buildings and structures of the said K. L. were well and sufficiently repaired and so kept and maintained during the continuance of the said grant and did carefully preserve and keep all the deeds evidences and writings touching the manors messuages lands tenements hereditaments and estates of the said K. L. as then or thereafter came to his hands custody or possession and did carefully provide for the person of the said K. L. and for his safety and for his family during the continuance of the said grant and did in all things demean himself as a careful and faithful Grantee or Committee of the person and estate of the said K. L. according to the said condition.

Plea of C. D.

[The Plea of C. D. was similar to that of A. B.]

Plea of E. F.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Easter Sitzings in the Fifty-third year of Queen Victoria.

Middlesex A. B., C. D. and E. F. at the suit of THE QUEEN.	}	And now that is to say on the 28th day of May in the year of our Lord One thousand eight hundred and ninety before our said Lady the Queen at Westminster cometh the said E. F. by M. N. his Solicitor and having heard the said Writ of Scire Facias read he saith
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That the said Bond was and is subject to a condition thereunder written whereby [*here the Bond is recited as in the Pleas of A. B. and C. D.*].

And this Defendant saith that before the issuing of the said Writ of Scire Facias the said A. B. as such Grantee and Committee as aforesaid did observe perform fulfil and keep all the obligations stipulations matters and things in the said condition mentioned on his part to be observed performed fulfilled and kept according to the said condition.

And hereupon the now pleading Defendant putteth himself upon the Country.

[NOTE.—To the author's mind, this is a more correct form of plea than that adopted by A. B. and C. D.]

Replication of the Attorney-General to the Plea of A. B.

[NOTE.—The title is thus in the original, but it should be as in the Pleas.]

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between HER MAJESTY THE QUEEN	-	-	-	-	-	<i>Plaintiff</i>
A. B., C. D. and E. F.	-	-	-	-	-	<i>Defendants.</i>

The 31st day of July, 1890.

And Sir RICHARD EVERARD WEBSTER Knight Her Majesty's Attorney-General who on behalf of Her Majesty prosecutes in that behalf comes and as to the plea of the Defendant A. B. by him above pleaded says that the said A. B. did not yearly or at all since the custody of the person and the regulation and government of the said K. L. and the custody regulation occupation disposition and receipt of his estate were committed and granted to the said A. B. make a just and true account of all and singular the rents issues and profits of the real estate of the said A. B. and also of his personal estate and the profits thereof as at the date of the said Bond were or thereafter came to his hands custody or possession or which he received out of or concerning the said estate such rents issues and profits having from time to time come into the hands of the said A. B. and that the said A. B. did not when thereunto required to wit by the Order of the Right Honourable Sir Charles Synge Christopher Bowen Knight one of the Lords Justices entrusted as in the condition of the said Bond mentioned dated the 11th day of November A.D. 1889 make a just and true account of all and singular the rent issues and profits aforesaid and that the said A. B. did not carefully observe perform and keep the orders and directions of the Lords Justices entrusted as in the condition of the said Bond mentioned or any of them for the time being made or after the date of the said Bond to be made touching or concerning the said K. L. and his estate and touching all such monies as should yearly remain due upon the foot of the account duly taken by one of the Masters in Lunacy and filed in the Office for that purpose appointed to wit the Order of the said Right Honourable Sir Charles Synge Christopher Bowen Knight one of the Lords Justices aforesaid dated the 11th day of November A.D. 1889 that the said A. B. should within 21 days of the service upon him of the said Order take in before the Masters in Lunacy a final account of his receipts and payments as such Committee of the person and estate of the said K. L. as aforesaid and should pass the same and also his first account as such Committee mentioned or referred to in the Certificate of Master Sir Alexander Edward Miller Knight Q.C. one of the Masters in Lunacy made in the Matter of K. L. a person of unsound mind on the 3rd day of August 1889 to wit the account lodged in the Office of the said Masters on the 18th day of January 1888 and should pay the balance which should be certified to be due from him within such time as the said Masters should by Certificate fix for that purpose in this that he the said A. B. did not within 21 days of the said service of the said Order upon him to wit upon the 26th day of December 1889 or at all take in before the said Masters a final account of his receipts and payments as

such Committee as aforesaid and did not pass the same nor his said first account contrary to the form and effect of the said condition of the said Bond. And this Her Majesty's said Attorney-General who on behalf of Her Majesty in that behalf prosecutes is ready on behalf of Her Majesty to verify &c.

[The Replications to the Pleas of C. D. and E. F. respectively are in terms similar to that to the Plea of A. B.]

Rejoinder of A. B.

[Those of C. D. and E. F. are similar to this. As to title, see Note to Replication.]

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between HER MAJESTY THE QUEEN	-	-	-	-	-	<i>Plaintiff</i>
	and					
A. B., C. D. and E. F.	-	-	-	-	-	<i>Defendants.</i>

The 1st day of November 1890.

The Defendant A. B. joins issue upon the Replication to the said Defendant's Plea.

Delivered this 1st day of November 1890 by G. H. of in the City of London Solicitor for the said Defendant.

PART II.

**Proceedings in Equity on the Revenue Side of the
King's Bench Division.**

Indorsement of English Information.

To the within-named A. B.

EDWARD THE SEVENTH R.

We command you [and every of you, *where there are more Defendants than one*] that within eight days after service hereof on you exclusive of the day of such service you cause an appearance to be entered for you in the King's Bench Division at the Royal Courts of Justice to the within contained Information and that you observe what Our said Court directs.

Witness the Right Honourable Robert Threshie, Baron Loreburn, Lord High Chancellor of Great Britain at Westminster, this day of 19 .

NOTE.—If you fail to comply with the foregoing directions an appearance may be entered for you, and you will be liable to be arrested and imprisoned [*or, in case of a Corporation, to be distrained by all your lands and chattels*], and to have a decree made against you in your absence.

Appearance is to be entered at the King's Remembrancer's Department, Royal Courts of Justice, London.

Pleadings on an English Information and Bill claiming Foreshore.

As of Hilary sittings 47th Victoria.

Filed 30th January 1879.

Amended 2nd February 1885.

Pursuant to Order of Master Sir Frederick Pollock dated 27th January 1885.

IN THE HIGH COURT OF JUSTICE.

Exchequer Division.

(Queen's Remembrancer.)

Between HER MAJESTY'S ATTORNEY-GENERAL (on behalf of Her Majesty) - - - - - *Informant*
 and
 THE HUMBER CONSERVANCY COMMISSIONERS and
 THE GUILD OR BROTHERHOOD OF MASTERS AND PILOTS
 SEAMEN of the Trinity House in Kingston-upon-Hull - *Plaintiffs*
 and
 SIR FREDERICK AUGUSTUS TALBOT CLIFFORD CONSTABLE,
 Baronet, and
 THOMAS CONSTABLE - - - - - *Defendants.*

AMENDED INFORMATION AND BILL.

To the Right Hon. Sir Fitzroy Kelly Knight Lord Chief Baron of the Exchequer Division of Her Majesty's High Court of Justice and to the rest of the Court and Barons there.

[NOTE.—(See *A.-G. v. Constable* (1879), 4 Ex. D. 172; 48 L. J. Ex. 455.) The title and formal parts of this Information and Bill have been retained. The title and formal parts of English Informations at the present day will be found in the precedents printed below, pp. 314, 326.]

Informing sheweth unto their Lordships Sir John Holker Knight Her Majesty's Attorney-General on behalf of Her Majesty Informant and

Humbly complaining show unto their Lordships the Humber Conservancy Commissioners and the Guild or Brotherhood of Masters and Pilots Seamen of the Trinity House in Kingston-upon-Hull in the county of York as follows:

1. The foreshore of the sea around the coasts of this kingdom including the coasts of the East Riding of the county of York and of the Rivers Humber and Hull and of the estuary and arms and creeks thereof between high water and low-water marks as also the bed of the said river estuary arms and creeks have been from time immemorial vested in Her Majesty and Her Predecessors Kings and Queens of England in right of Her and their Crown of England and the same are now vested in Her Majesty her heirs and successors in her said right of Her Crown of England except in so far as Her Majesty or Her Predecessors Kings and Queens of England has or have been pleased to grant part or parts thereof to any person or persons but no part or parts thereof has or have been granted at any time by Her Majesty or Her Predecessors Kings and Queens of England to the Defendants Sir Frederick Augustus Talbot Clifford Constable Baronet and Thomas Constable or either of them or to any one or more of their predecessors in title.

2. This suit relates to the foreshore of the sea and of the Rivers Humber and Hull along the hundred or wapentake of Holderness the ancient boundaries of which are the North Sea the River Humber the River Hull (on the North) a line from Barmston Beck to Frodingham Bridge or near thereto sometimes called the Earl's Dyke The River Hull is tidal and navigable for 20 miles and upwards above its confluence with the Humber and the foreshore in question is more than 70 miles in length.

3. The Defendants claim to be entitled under certain Letters Patent of the 6th February 4th and 5th Philip and Mary set out in the Statement of Claim herein-after mentioned to a manor of Holderness comprising the entire area of the ancient hundred or wapentake of Holderness with certain alleged exceptions stated in the answer of the Defendants (the excepted places being in fact of lands along the foreshore of the River Humber where there has been user and enjoyment openly adverse to any such claim) The Defendants allege that this supposed manor extends to low-water mark of the sea and of the River Humber but only to high-water mark of the River Hull And the Defendants claim the soil of the foreshore of the sea and Humber along the whole of the hundred of Holderness (with the above exceptions) as parcel of the said alleged manor of Holderness.

4. If (which the Informant and Plaintiffs wholly deny) such a manor exists its boundaries extend only to high water and not to low-water mark of the sea and of the River Humber as well as of the River Hull but in fact no manor of Holderness and no such manor under any other name as the Defendants allege exists or ever existed There was anciently an important fief called the honour of Albemarle comprising lands in divers counties and also in foreign parts but this fief escheated to the Crown in the year 1273 by the death of Avelina sole heiress of the Earls of Albemarle and was never again granted out The hundred or wapentake of Holderness with the right to hold the hundred courts and receive the suits and services to the Crown there to be rendered and to appoint a bailiff escheator or other officer within the hundred and to receive by such officer the profits of wreck and other Crown franchises accruing within the limits of the hundred (except in parts where such franchises had been expressly granted by the Crown to some other person or persons) has been from time to time granted by the Crown usually in conjunction with a manor called the manor of Burstwick and other manors locally situate within the said hundred and such franchises and rights belonging to the grantee of the hundred of Holderness have been sometimes called the lordship of Holderness but no such grant has carried with it any right or title to the soil of the said foreshore.

5. The foreshore of the Rivers Humber and Hull along the hundred of Holderness in the neighbourhood of the town of Hull is of considerable extent and of large value Such foreshore has since the date of the alleged grant of the supposed manor of Holderness been from time to time occupied embanked built on sold and otherwise publicly dealt with by the Crown and its grantees without recognition of any right or title thereto in the Defendants or their predecessors and without claim by them Queen Elizabeth King Charles II. and others of Her Majesty's Royal Predecessors constructed and maintained on parts of the said foreshore fortifications jetties and other works in connection with the citadel of Hull and exercised other acts of ownership over the said foreshore.

6. Under the provisions of the Hull Dock Act 1802 (42 Geo. III. cap. 91) certain parts of the said foreshore of the River Humber extending to low-water

mark on one of which the Humber entrance to the Victoria Dock is now constructed together with adjoining foreshore of the River Hull were (partly in consideration of the sum of £8,000) granted by the Crown to the Corporation of Hull and the Guild or Brotherhood of the Hull Trinity House for sale as in the said Act mentioned and the premises so granted including 25 acres of foreshore were afterwards publicly sold in lots from time to time as purchasers offered and such foreshore has been since embanked and built on by such purchasers. The conveyances extended over a period of 70 years and have been carried out without any suggestion or claim of title on the part of the Defendants or their predecessors.

7. Between 1802 and 1874 a succession of grants have been made by the Crown of further portions of the foreshore of the River Humber along the hundred of Holderness between the confluence of the Humber and Hull and Hedon Haven and the foreshore so granted was embanked built on and used for commercial and other purposes by the Crown grantees without interruption or claim by the Defendants or their predecessors. In addition to the grants made by the indentures of 1st January 1869 and 22nd December 1869 herein-after stated the following grants have been made viz. :

- (1) Under the provisions of the Hull Docks Act 1844 the Commissioners of Her Majesty's Woods Forests Land Revenues Works and Buildings sold and by deed dated 8th September 1846 conveyed to the Hull Dock Company 15 acres of foreshore of the River Humber lying to the eastward of the entrance basin of the Victoria Dock for the purposes of docks and other works which have since been made thereon.
- (2) By Indenture dated 30th March 1858 the Commissioners of Her Majesty's Woods Forests and Land Revenues sold and conveyed to Mr. William Travis a portion containing 18a. 2r. of the said Humber foreshore lying to the eastward of that conveyed by the said Indenture of the 8th September 1846. This foreshore now forms part of the works of Messrs. Earle's Shipbuilding and Engineering Company Limited.
- (3) By Indenture dated 11th December 1860 the said Commissioners on behalf of Her Majesty sold and conveyed to James Beeton and Thomas Haller 4a. 2r. of the said foreshore of the Humber at Drypool lying to the eastward of the foreshore sold to the said William Travis.
- (4) By Indenture dated 29th August 1862 the said Commissioners demised to Messrs. Martin Samuelson and Company for 99 years at a rent (after the first two years) of £250 which rent is now received by the Crown a further portion of the said Humber foreshore with the buildings patent slips and works erected by the lessees thereon.
- (5) By Indenture dated 16th March 1869 the said Commissioners sold and conveyed about 2a. of the said foreshore to the Hull Dock Company.
- (6) By Indenture dated 29th April 1872 the said Commissioners on behalf of Her Majesty in consideration of £8,100 sold and conveyed to the Corporation of Hull two pieces of the said Humber foreshore containing 93a. or thereabouts.
- (7) By Indenture dated 25th March 1873 the Plaintiffs the Humber Conservancy Commissioners and the Board of Trade, under the provisions of the Humber Conservancy Act 1868 and of the lease of the 1st January 1869 herein-after stated sold and conveyed to Earle's Ship Building

and Engineering Company Limited a piece of the said Humber foreshore containing 2a. 3r. 4p. adjoining to the foreshore sold to the said William Travis in 1857.

8. In the year 1877 the Hull Dock Company agreed to purchase from the Crown the land forming the site of the said citadel of Hull and the unembanked foreshore of the River Humber in front thereof for the sum of £220,000 to be paid by instalments and this agreement was confirmed by the Hull Dock Act 1877 and several of such instalments have been already paid.

9. The Defendants contend that the portion of foreshore adjacent to the site of the said citadel stands as regards their present claim on a different footing from the rest of the foreshore of the River Humber along the ancient limits of the hundred of Holderness inasmuch as such portion had (they allege) been granted out (with the citadel) by King Edward VI. and so severed as they allege from the supposed manor of Holderness before the date of the Letters Patent of 4 and 5 Philip and Mary herein-before referred to but there is no foundation for this contention King Edward VI. committed to the Corporation of Hull the custody of the citadel on behalf of the Crown but made no grant of the citadel itself or of the foreshore in front of it.

10. By an indenture of lease made on or about the 1st day of January 1869 between the Queen's most Excellent Majesty of the first part the Board of Trade of the second part and the Humber Conservancy Commissioners of the third part the Board of Trade on behalf of the Queen's Majesty by virtue of and in exercise of the powers in them vested under the Humber Conservancy Act 1868 and of every other power enabling them in this behalf granted demised and leased to the said Humber Conservancy Commissioners and their successors for the consideration and subject to the covenants therein mentioned for the term of 999 years from the date of the said indenture the foreshores and bed of the Humber and the estuary thereof from the confluence into the same of the Ouse and Trent to the sea (that is to say) to an imaginary line drawn straight from Donna Nook to the mooring point of the chequered buoy at the mouth of the Humber and straight thence to the eastern extremity of the line forming the northern boundary of that portion of the foreshore outside Spurn Head granted or agreed to be granted on behalf of Her Majesty to the Lords Commissioners for executing the office of Lord High Admiral as far as the foreshores and the bed aforesaid were under the management of the Board of Trade but so that nothing in the said lease should be deemed to extend to the lands or the part or parts of the foreshore and bed aforesaid or the rights described or referred to in the schedule to the said indenture of lease And out of the said lease was excepted and reserved full and free right to Her Majesty Her heirs and successors and for all persons by Her and their permission (the said permission to be assumed to have been granted until the contrary is shown) to ride drive walk or otherwise pass to and fro over and to fish and bathe and gather seaweed from the demised foreshores and to land thereon goods and passengers in vessels and boats and to embark therefrom goods and passengers in vessels and boats save as far as the Board of Trade should by license in writing authorise the said Commissioners to interfere permanently or otherwise with the aforesaid right in all or some respects in relation to any portion of the demised foreshore and also there were reserved and excepted out of the said lease all rights of way and access to and over the foreshores existing at the date of the said lease by means of any public road footpath bridge or other means Provided always (amongst other things) that if that portion of the net profits which is payable to the Board

of Trade under the said lease or any part thereof should be unpaid for 30 days after any day on which the same ought to be paid (whether legally demanded or not) or in case default should be made by the Commissioners in the observance or performance of any covenant or provision in the said lease or if any act should be done or suffered by the Commissioners whereby the demised foreshores or any part thereof should or might without the consent of the Board of Trade as aforesaid become vested in any person or in any body other than the Commissioners then the Board of Trade by their officers or agents in the name and on behalf of the Queen's Majesty Her heirs and successors at any time thereafter into and on the demised foreshores or any part thereof in the name of the whole might re-enter and the same have again and repossess and enjoy as if the said lease had never been made and thereupon the term by the said presents granted should cease without prejudice to any right or remedy of the Queen's Majesty Her heirs or successors under the said lease Provided nevertheless that if at any time the Commissioners with the consent of the Board of Trade as aforesaid should assign or underlet any part of the demised foreshores the Board of Trade might if they should think fit release as far as regards that part the power of re-entry reserved to them by the said lease without prejudice to the exercise of that power as regards the residue of the demised foreshores.

The Humber Conservancy Commissioners in the said indenture of lease mentioned are the Plaintiffs herein who are duly incorporated by that name under the provisions of the Hull Conservancy Acts and have entered into and now are in possession of the said demised foreshore under the said lease and the said demised foreshore is part of the foreshore mentioned in paragraph 1 herein.

11. The premises excepted out of the said lease and in the schedule to the said indenture set out are as follows:—

- (1) All lands and parts of foreshores and bed of the River Humber coloured red on the plans mentioned in section 25 of the Humber Conservancy Act 1868.
- (2) Any other lands or parts of foreshores or bed of Humber excepted or intended to be excepted by the said section of the aforesaid Act.
- (3) Any lands or foreshore of the Dock Company at Kingston-upon-Hull purchased or contracted to be purchased by the said Company from the Crown before the passing of the said Act and any rights of the said Company attaching to or connected with those lands.
- (4) Such parts of foreshores or bed of Humber as before the passing of the aforesaid Act had been sold or disposed of or were held on lease either for lives or years.

The lands and parts of foreshores and bed of the River Humber referred to in the 1st and 2nd clauses of the said schedule were by the said 25th section of the Humber Conservancy Act 1868 reserved to Her Majesty in right of Her Crown and to persons and corporations to whom Her Majesty and Her Royal Predecessors had granted the same respectively.

12. By an indenture made on or about the 22nd day of December 1869 between the Humber Conservancy Commissioners (therein called the Commissioners) of the first part the Board of Trade of the second part and the Guild or Brotherhood of Masters and Pilots Seamen of the Trinity House in Kingston-upon-Hull (therein called the Guild) of the third part the Commissioners with the consent of the Board of Trade for the consideration therein mentioned and by virtue and in exercise of the powers in them vested under the Humber Conservancy Act 1868 and the said indenture of lease herein-before recited and

of every other power enabling them in that behalf did demise and lease to the said Guild and their successors a certain piece of foreshore of one acre or thereabouts being part of the foreshore and bed of the Humber leased as aforesaid to the said Commissioners by the Board of Trade and situate in front of and adjoining a certain common in the parish of Preston in Holderness known as Salt End to have and hold the same for the residue of the afore-mentioned term of 999 years and in the same indenture the Board of Trade for the consideration therein mentioned did remise release and for ever quit claim unto the said Guild and their successors all that the power and right of re-entry into and on the foreshores thereby demised reserved to the Board of Trade in and by the said herein-before recited indenture of lease.

The said Guild are incorporated under the name above recited and are Plaintiffs herein And the said Guild did thereupon enter into possession of and have since possessed the said one acre of foreshore.

13. Her Majesty and Her Royal Predecessors Kings and Queens of England have always owned and enjoyed the said foreshore of the sea in the first paragraph herein-before mentioned and the arms and creeks thereof and of the Rivers Humber and Hull and the estuary arms and creeks thereof as also the bed of the said river estuary arms and creeks and exercised ownership and dominion over the same Yet the Defendants pretend that Her Majesty and her grantees and lessees are not now entitled to the said foreshore but that the said foreshore or some portion thereof under divers pretended Crown grants or otherwise is now vested in the Defendants or one of them and was vested in their or his predecessors in title.

14. The Attorney-General has annexed by way of schedule to this information a map of the coast of the East Riding of the county of York and of the said Rivers Humber and Hull and the estuary arms and creeks thereof and of the River Humber up to the confluence of the Ouse and Trent The Defendants ought to and the Attorney-General claims that they shall forthwith set forth by metes and bounds and by reference to the said map how much of the said foreshore the Defendants so claim and by what title and Her Majesty's Attorney-General and the Plaintiffs charge the contrary of all the said pretences to be true.

15. The Defendants pretend that there is within the East Riding of the county of York a certain seignory liberty manor and fee of Holderness with certain liberties manors and places within the same including the places of Marfleet and Preston and that the said pretended seignory liberty manor and fee of Holderness and the said pretended liberties manors and places within the same including the places of Marfleet and Preston became vested in the Defendants or one of them or his or their predecessors in title or one of them Her Majesty's Attorney-General and the Plaintiffs say that it may be true that the Defendants or one of them or his or their predecessors in title are or have been entitled to the hundred or wapentake or liberty of Holderness but save as aforesaid charge the contrary of all such pretences to be true There is not and never was any manor or fee of Holderness and there is not and never was annexed to or enjoyed with the said wapentake or liberty of Holderness or otherwise vested in the Defendants or either of them or in their predecessors in title any part of the soil of the foreshore or bed of the sea or River Humber.

16. The Defendants also pretend that a portion of the said foreshore of the sea and the arms and creeks thereof and of the River Humber and the estuary arms and creeks thereof between high-water and low-water mark is within or

parcel of the said seignory liberty pretended manor and fee of Holderness and the said pretended liberties manors and places within the same including the places of Marfleet and Preston and became vested in the Defendants or one of them and in their or his predecessors in title or one of them Whereas Her Majesty's Attorney-General and the Plaintiffs charge the contrary of the said pretences to be true.

17. On or about the 18th day of March 1878 the Defendants sued out a writ of summons in the Court of His Lordship the Vice-Chancellor Sir Richard Malins in the Chancery Division of the High Court of Justice against the Plaintiffs the Humber Conservancy Commissioners and the Guild or Brotherhood of Masters and Pilots Seamen of the Trinity House in Kingston-upon-Hull which was endorsed as follows:—[*The indorsement of the writ is set out.*]

18. The Plaintiffs the Humber Conservancy Commissioners and the Guild or Brotherhood of Masters and Pilots Seamen of the Trinity House in Kingston-upon-Hull have appeared to the said writ and on the 15th day of June 1878 the Defendants herein delivered their Statement of Claim in the said action which Statement of Claim is in the words and figures following:—[*The Statement of Claim is set out.*]

19. The Defendants also in December 1878 commenced two other actions of *Constable v. Mayor Aldermen and Burgesses of the Borough of Kingston-upon-Hull* 1878 C. No. 423 and *Constable v. Spurr* 1878 C. No. 424 against the grantees of the Crown in possession of the portions of foreshore respectively granted by the Indentures of the 29th day of April 1872 and the 11th day of December 1869 mentioned in sub-sections (6) and (3) of paragraph 7 of this amended Information and Bill and also an action seeking to restrain the Withernsea Pier Promenade Gas and General Improvement Company from removing with the license of the Board of Trade cobbles and other substances from the foreshore of the sea at Withernsea and delivered Statements of Claim in the actions containing allegations of title similar to those of the Statement of Claim set forth in paragraph 18 of this amended Information and Bill.

20. The Informant and Plaintiffs do not admit the truth of the allegations contained in the Statement of Claim herein-before set forth or any of them and with reference to the Letters Patent of 4th and 5th Philip and Mary stated in paragraph 1 of the said Statement of Claim they say that the description of the premises purported to be granted by the said Letters Patent as having been part of the possessions of Edward then late Duke of Buckingham is mistaken and erroneous in several respects No manor of Holderness ever was held by the said Edward then late Duke of Buckingham or any other person or ever existed Lelley Dyke and also Little Humber Preston and other places in the said Letters Patent mentioned were not lordships or manors but only hamlets or vills Tunstall Moys Dounceley and Helpstone were not lordships or manors nor even hamlets or vills but only bailiwicks or divisions of a bailiwick.

21. The aforesaid Edward Duke of Buckingham and other persons before him from time to time held by grant from the Crown certain possessions in Holderness including the manor of Burstwick in the said Letters Patent mentioned (which is an inland manor) and other manors and including also the hundred or wapentake of Holderness with the franchise or right of perception of wreck within the limits of the hundred except places in which such franchise had previously been granted by the Crown to some other person or persons and other rights and franchises annexed to or held with the said hundred The lordship of the hundred of Holderness together with the other franchises and

incorporeal rights usually granted therewith was sometimes called "the lordship of Holderness" but nothing passed or was intended to pass under that term to the grantee under the said Letters Patent of 4th and 5th Philip and Mary beyond the said hundred or wapentake and other franchises and incorporeal rights being in fact the rights afterwards granted in express terms by the Letters Patent of King Charles I. dated 8th January 1641 by way of settlement of the doubts and questions raised by the erroneous language of the said Letters Patent of Philip and Mary.

22. As to paragraph 8 of the said Statement of Claim the judgment of the Court of Queen's Bench in Sir Henry Constable's case in 43 Elizabeth was against Sir Henry Constable and it was not held by the Court that the foreshore now claimed by the Defendants or any foreshore was vested in him. The said Sir Henry Constable in that action relying on the erroneous language of the said Letters Patent of Philip and Mary alleged that he had a manor of Holderness instead of claiming title to the franchise of wreck within the hundred of Holderness and the Crown was no party to the said action but in the subsequent litigation with the Crown which resulted in the acceptance by the predecessor in title of the Defendants of the Letters Patent of 16th Charles I. (1641) any claim to the supposed manor of Holderness was in fact abandoned.

23. As to paragraph 9 of the said Statement of Claim the verdict in 1763 in a suit between the Attorney-General and William Constable in the said paragraph referred to did not relate to foreshore at all but to a piece of land called Cherry Cobb Sand situate above ordinary high-water mark. Further legal proceedings took place after the date of the said verdict and the said William Constable in such proceedings claimed the said piece of land as parcel not of any manor of Holderness but of an alleged manor of Little Humber and the litigation was ultimately compromised.

24. The Informant and Plaintiffs say that it may be true that the Defendants and their predecessors in title have received the profits of wreck found on some parts of the foreshore now claimed by them as being entitled to franchise of wreck found on such parts of the said foreshore by virtue of the Crown grants made to them but the Informant and Plaintiffs deny that the Defendants or their alleged predecessors in title or any of them have or has at any time exercised any acts of enjoyment over the soil of the said foreshore or of any part thereof. If (which the Informant and Plaintiffs deny) they have purported at any time to grant leases or licenses of or otherwise assumed to deal with the foreshore such acts have been done secretly or under colour of some other alleged title and without the knowledge of the Crown or its advisers. On the contrary the Crown and its grantees have from time to time openly and as of right dealt with various parts of the foreshore of the sea and of the River Humber now claimed by the Defendants and exercised acts of ownership over the same by making and maintaining jetties embankments reclamations and other works and otherwise without any interruption by and without any recognition of title in the Defendants or their alleged predecessors as aforesaid.

25. The Attorney-General on behalf of Her Majesty charges that the object of the Defendants in the said action against the Plaintiffs the Humber Conservancy Commissioners and the Guild or Brotherhood of Masters and Pilots Seamen of the Trinity House in Kingston-upon-Hull is to attack and deny the title of Her Majesty in right of Her Crown of England to the foreshore lands and premises mentioned in the said Statement of Claim which is part of the foreshore mentioned in paragraph 1 of this Information and the right of Her

Majesty and the Board of Trade to grant the whole or part thereof whether absolutely by way of lease or otherwise to any person or persons and it is of great importance to Her Majesty and Her land revenues that Her title and right to the said part of the said foreshore and premises and the right of Her Majesty and the Board of Trade to make grants of the whole or part of the said foreshore and premises either absolutely by way of lease or otherwise should be protected by Her Majesty's Attorney-General.

26. The Attorney-General on behalf of Her Majesty further charges that certain questions are amongst others at issue between Her Majesty in right of Her Crown of England and the Defendants videlicet (1) Whether Her Majesty in right of Her Crown of England is entitled to the said foreshore mentioned or referred to in the said Statement of Claim and whether the same is vested in Her Majesty in right of Her Crown of England (2) Whether Her Majesty and the Board of Trade on Her behalf can grant the whole or part of the said foreshore and premises to any person or persons either absolutely by way of lease or otherwise It is of great importance to Her Majesty and to Her land revenues that such questions should be determined in order that grants and leases may continue to be granted as heretofore they have been granted of part or the whole of the said foreshore and premises and that Her Majesty's grantees and lessees may possess or continue to possess (as the case may be) the said foreshore and premises or parts thereof but such questions cannot be directly raised or determined in the said action.

27. Under the circumstances aforesaid the Attorney-General informs this Honourable Court that the matters in question in the said action and in this Information touch and concern Her Majesty's revenues and royal possessions and rights and privileges and that Her Majesty's title to the said possessions and rights and privileges ought not to be brought in question in the said action and the Attorney-General further informs this Honourable Court that Her Majesty cannot have adequate relief in the premises in the Chancery Division of the High Court of Justice or the other divisions of the said High Court in respect of the premises and the Attorney-General charges that the title and right of Her Majesty in right of Her Crown of England to the foreshore and premises mentioned in the first paragraph of this Information and to the foreshore claimed in the said Statement of Claim and Her right and title to make grants or grant leases thereof and the right of the Board of Trade to manage the same ought to be declared and that the Defendants ought to be restrained by the order and injunction of this Honourable Court from hindering and preventing Her Majesty and Her grantees and lessees and the grantees and lessees of the Board of Trade from possessing and enjoying as fully as they are entitled the said foreshore and premises and from granting the whole or part thereof and granting leases whether for lives or years as Her Majesty and the Board of Trade have been heretofore accustomed.

28. The Attorney-General further charges and the Plaintiffs submit that under the circumstances herein stated the Defendants Sir Frederick Augustus Talbot Clifford Constable Baronet and Thomas Constable ought to be restrained by the order and injunction of this Honourable Court from further prosecuting the said action which they have commenced as aforesaid and that the said action ought to be removed into this side of the Exchequer Division of the High Court of Justice.

29. The Defendants by their answer filed in this suit set up an alternative claim or claims that if their claim to the foreshore of an alleged manor of

Holderness be unfounded they are nevertheless entitled to the several foreshores adjoining such of the manors alleged to be comprised in the said Letters Patent of 4th and 5th Philip and Mary (called by the Defendants "the demesne manors") as abut on the sea or on the River Humber and are still in the ownership of the Defendants as parcel of such manors respectively. Some of the so-called "lordships and manors" mentioned in the said Letters Patent are not and never were manors at all and others are situate wholly inland and others are not now the property of the Defendants. So far as the Informant is aware the only manors to which the aforesaid alternative claim of manorial title to foreshore could apply are Kilnsea which abuts partly on the River Humber and partly on the sea and Withernsea and Skipsea which abut on the sea but not on the Humber. The Informant does not admit that the Defendants are entitled to the foreshore adjoining the last-mentioned manors or to any foreshore but the Defendants ought to set forth precisely and by name what are the particular manors in respect of which they so alternatively claim title to foreshore as parcel of such manors respectively and within what parishes or townships and at what places therein such manors respectively abut on the sea or on the River Humber respectively and by what title they hold such respective manors and to distinguish the portions of foreshore to which such alternative claim extends from the rest of the foreshore claimed by them in the said action against the Humber Conservancy Commissioners.

30. The Defendants have now or lately had in their respective custody or power and in the custody or power of their attorneys solicitors and agents divers Letters Patent deeds maps plans manuscript and other books papers and writings relating to the matters in question in this suit which they ought to produce.

PRAYER.

The Attorney-General on behalf of Her Majesty and the Plaintiffs pray as follows :—

1. That it may be declared that Her Majesty in right of Her Crown of England is seised of and entitled to the foreshore of the sea along the coast of the East Riding of the county of York and the arms and creeks thereof including the River Humber and the estuary arms and creeks thereof between high-water and low-water marks as also of the bed of the River Humber and the estuary arms and creeks thereof as far as the tide ebbs and flows or of so much of such foreshore and premises as is claimed in the said Statement of Claim delivered in the action of *Constable v. Humber Conservancy Commissioners* 1878 C. No. 92 and that the same have from time immemorial been vested in Her Majesty and her predecessors Kings and Queens of England and now are vested in Her Majesty her heirs and successors in right of Her and their Crown of England (subject to the grants and leases by the Crown hereinbefore stated) and that the title of Her Majesty to the said foreshore and premises may be established against the Defendants.
2. That the right of Her Majesty and the Board of Trade to make grants and grant leases whether for lives or years as heretofore of the whole or part of the said foreshore and bed and the right of such grantees and lessees to peaceably and quietly possess and enjoy the same may be declared and that Her Majesty and the Plaintiffs may be quieted in their possession and enjoyment of the premises.

3. That the Defendants Sir Frederick Augustus Talbot Clifford Constable Baronet and Thomas Constable may be restrained by the order and injunction of this Honourable Court from hindering preventing and molesting Her Majesty and the Board of Trade and her or their grantees and lessees in the peaceable and quiet enjoyment and possession of the said foreshore and premises.
4. That the said Defendants may be restrained by an order and injunction of this Honourable Court from further prosecuting the said action which they have commenced against the Plaintiffs as aforesaid and that the said action may be removed into this side of the Exchequer Division of the High Court of Justice.
5. That the said Defendants may make full discovery in the premises and render particulars of their several alleged acts of ownership.
6. That the Attorney-General on behalf of Her Majesty and the Plaintiffs may respectively have such further or other relief in the premises as the case may require.

JOHN HOLKER.

Amended

F. Vaughan Hawkins.

Names of the Defendants—

Sir Frederick Augustus Talbot Clifford Constable Baronet and Thomas Constable.

BY AMENDED INFORMATION AND BILL.

The Answer of the Defendants Sir Frederick Augustus Talbot Clifford Constable Baronet and Thomas Constable to the Amended Information and Bill of Her Majesty's Attorney-General and of the above-named Plaintiffs.

In answer to the said Amended Information and Bill we Sir Frederick Augustus Talbot Clifford Constable and Thomas Constable jointly and severally say as follows—

1. We do not admit that the foreshore of the sea around the coasts of this kingdom has been immemorially vested in Her Majesty and her predecessors Kings and Queens of England in right of Her and their Crown of England or that the same is now vested in Her Majesty Her heirs and successors in Her said right of Her Crown of England except in so far as Her Majesty or Her predecessors Kings and Queens of England has or have been pleased to grant part or parts thereof to any person or persons. And we further say that divers parts thereof are now vested in divers persons by lost grant or by long possession or as parcels of divers lordships or manors. We further say that such parts of the foreshore of the sea on the coasts of the East Riding of the County of York and the River Humber and of the estuary and arms and creeks thereof between high-water and low-water marks as are within the seignory lordship manor or fee of Holderness have not from time immemorial been vested in Her Majesty and Her predecessors Kings and Queens of England in right of Her and their Crown of England and the same are not now vested in Her Majesty Her heirs and successors in Her said right of Her Crown of England but such parts of the said foreshore have been from before the time of legal memory parcel of the lordship and manor of Holderness and have been granted by Her Majesty's predecessors to the predecessors in title of us the said Defendants as being within and parcel of the seignory lordship manor or fee of Holderness by virtue of the Letters Patent of their late Majesties King Philip and Queen Mary made to

Henry Earl of Westmoreland and bearing date 6th February in the 4th and 5th year of their reign and by divers mesne assurances and other acts in the law have come to and are now vested in or belong to us the said Defendants. The foreshore of the River Hull was not granted to our predecessors in title by the said Letters Patent of 4th & 5th Philip and Mary and is not parcel of the seignory lordship manor or fee of Holderness and we do not claim the same. We believe that the River Hull in ancient times changed its course and broke through the lands of one Sayer de Sutton in or about its present course but to whom the said river and its foreshore if any now belong we do not know and cannot state as to our belief or otherwise.

The Port of Hull was not a port within the liberty of the lordship and manor of Holderness. As to the portions of foreshore of Great Coldon Patrington Welwick and Weeton we say that such portions came to our predecessors in title either as part of the said seignory lordship manor or fee as granted to our predecessors in title by the Crown or by or under a lost grant by the Archbishop of York or by some other person or persons having title thereto or by long enjoyment and such portions have always passed as part of the Constable Estates and all rights of foreshore have always been exercised thereon and with respect thereto by our predecessors in title and by us.

2. In answer to paragraph 2—We say that this suit does relate to the foreshore of the River Humber but does not relate to the foreshore of the River Hull and that we do not claim the foreshore of that river and in fact we believe that there is practically no foreshore on the River Hull.

3. In answer to paragraphs 3 and 4—We say that we are entitled under the Letters Patent of 6th February 4 & 5 Philip and Mary and by lost grant and otherwise as herein appears to the manor lordship seignory or fee of Holderness which extends to the low-water mark of the River Humber and the sea but does not as hereinbefore appears extend to the low-water mark of the River Hull. The said seignory lordship manor or fee hereinafter called the lordship and manor was an ancient manor granted to our predecessors in title and to the predecessors in title of their late Majesties King Philip and Queen Mary and we believe that at one time it formed part of the possessions of the Earls of Albemarle which possessions were commonly known as the honor of Albemarle and we are informed and believe that such possessions comprised lands in divers counties and also in foreign parts. We also believe that the possessions of the Earls of Albemarle escheated to the Crown in the year 1273 and we say that the said possessions were not afterwards granted out by the Crown as an integral honor or *grossum per se* to be held of the Crown by any stated or particular service. On the contrary we say that the various manors lordships and fees including the lordship and manor of Holderness of which the said possessions were composed were granted out from time to time to divers persons and in particular the lordship and manor of Holderness with all its rights members and appurtenances was granted to our predecessors in the manner above set out together with the foreshore thereunto belonging and we say that the hundred or wapentake of Holderness with the right to hold the hundred Courts and receive the suits and services to the Crown there to be rendered and to appoint a bailiff escheator and other officers and to receive by such officers the profits of wreck and other Crown franchises accruing within the limits of the hundred were parcel of and annexed and incident to the said lordship and manor of Holderness and have been held and exercised by the owners of that lordship and manor from time to time being our predecessors in

title and were held and exercised by Edward late Duke of Buckingham and their late Majesties King Philip and Queen Mary before the granting of the Letters Patent of 6th February 4 & 5 Philip and Mary in right of the said lordship and manor and not in right of the honor of Albemarle and that the said hundred and wapentake of Holderness and the right to hold Courts and appoint officers and to take wreck and other Crown franchises were granted to our predecessors with the said lordship and manor and have been held and exercised by our predecessors and by us by virtue of the said grant and by virtue of our ownership of the said lordship and manor and otherwise as herein appears and are now vested in us and we and our predecessors have received all the profits thereof and we say that the soil of the foreshore of the said lordship and manor was parcel thereof before the possessions of the Earls of Albemarle escheated to the Crown and remained parcel thereof after the said possessions escheated and was in the possession of Edward late Duke of Buckingham and their late Majesties King Philip and Queen Mary as parcel of the said lordship and manor before the granting of the Letters Patent of 6th February 4 & 5 Philip and Mary above-mentioned and was granted to and became vested in our predecessors in title by the said Letters Patent and is now vested in us.

In answer to paragraph 5—We say that the foreshore of the River Humber has been enjoyed by us and our predecessors from before the date of legal memory except in such places as we and our predecessors have granted portions of the same to other persons and except in such portions of the original lordship and manor of Holderness as have been severed from the said lordship and manor when it has been in the hands of the Crown and that such portions so severed from the said original lordship and manor were severed from it before it was granted to our predecessors in title by the said Letters Patent of 6th February 4 & 5 Philip and Mary and do not form part of the said lordship and manor as now held by us. The site of the citadel of Hull was so severed from the said lordship and manor by King Edward VI. and we believe that the foreshore opposite to the said citadel and its appurtenances has been occupied embanked built on sold and otherwise publicly dealt with by the Crown and its grantees and that Queen Elizabeth King Charles II. and others of Her Majesty's Royal predecessors have constructed and maintained upon the foreshore adjoining the citadel of Hull fortifications jetties and other works in connection with the citadel of Hull and exercised other acts of ownership over the said foreshore but we say that such acts were not acts of ownership over any foreshore belonging to us or parcel of the said lordship and manor of Holderness. And we say that if any portion of the foreshore of any part of such citadel site and its appurtenances ever belonged to our predecessors in title as parcel of the said lordship and manor the right and title thereto has been lost through adverse possession submitted to as we believe by the mistake and misunderstanding of our predecessors in title of their rights and boundaries.

4. In answer to paragraphs 6, 7, 8, 9, 10, 11 and 12 of the said Amended Information—We say that we do not know the particulars of some of the grants and leases therein mentioned but to the best of our knowledge information and belief all such grants and leases relate to foreshore adjacent to the site of the citadel of Hull and its appurtenances with the following exceptions—

I. The Indenture of 11th December 1860 being a grant to James Beaton and Thomas Haller. This portion comprising 4a. 2r. was sold by us on 30th December 1881 to Joseph Stanfield Grimshaw and others by direc-

tion of Thomas Spurr for £3000. We crave leave to refer to the said Indenture.

II. The Indenture dated 29th April 1872 being a grant to the Corporation of Hull. This portion of foreshore comprising 93a. is the foreshore in dispute in the litigation between us the Defendants and the Corporation of Hull. Pending the litigation part of such foreshore has been entered upon by the Hull Barnsley and West Riding Junction Railway and Dock Company under the powers contained in the Lands Clauses Consolidation Act 1845 incorporated with their special Act and on making such entry they have paid into Court in manner provided by the Act the sum of £25000 and have given bond to me the said Sir Frederick Augustus Talbot Clifford Constable as required by the Act.

III. The Indenture of 1st January 1869 being a lease to the Humber Conservancy Commissioners of foreshore part of which is in dispute in this litigation—pending which certain portions of the same foreshore have been entered upon by the Hull Barnsley and West Riding Junction Railway and Dock Company and the sums of £8730 and £7500 have been paid into Court and bonds given in like manner as hereinbefore mentioned in reference to No. II.

IV. The Indenture of 22nd December 1869 being the lease from the Humber Conservancy Commissioners to the Trinity House of foreshore in Preston which is also part of the foreshore in dispute in the present litigation.

We further say that to the best of our knowledge information and belief no grants or leases have been made of any foreshore between Hull and Hedon Haven between the years 1802 and 1874 save and except as hereinbefore appears.

And we further say that all the Indentures mentioned in the said paragraph of the said Information which relate to foreshore situate to the east of the site of the citadel of Hull and its appurtenances are made without title and are invalid and that the acts done under them are trespasses upon us.

5. In answer to paragraph 13—We say that Her Majesty and Her Royal predecessors Kings and Queens of England have not always owned and enjoyed the said foreshore of the sea in the first paragraph of the said Amended Information mentioned and the arms and creeks thereof and of the River Humber and the estuary arms and creeks thereof and exercised ownership and dominion over the same and we do not pretend but aver that Her Majesty and her grantees and lessees are not now entitled to the said foreshore but that the said foreshore except as appears herein and in our former Answer is now vested in us and was vested in our predecessors in title. As to the foreshore (if any) of the River Hull the estuary arms and creeks thereof and the bed of the said river the estuary arms and creeks thereof we do not know and cannot state as to our belief or otherwise to whom the said foreshore and bed belong or who have exercised ownership and dominion over the same but we do not claim it and we refer to paragraph 1 of this our Answer.

6. In answer to paragraph 14—We say that the foreshore which we claim extends from the easternmost end of the site of the citadel of Hull and its appurtenances to Barmston Beck otherwise Earl's Dyke and the boundaries thereof and our title thereto are fully and sufficiently set forth herein and in our former Answer.

7. In answer to paragraphs 15 and 16—We say that there is within the

East Riding of the County of York a certain seignory liberty manor or fee of Holderness which is the same manor herein referred to as the lordship and manor of Holderness with certain liberties manors and places within the same including the places of Marfleet and Preston and that it is vested in us and we say that the hundred or wapentake or liberty of Holderness is and from the time of legal memory has been parcel of and annexed or incident to the said lordship manor or fee and that the soil of the foreshore of the sea and River Humber as far as the low-water mark where it adjoins the said lordship and manor is and from time immemorial has been parcel of the said lordship and manor but we do not claim the bed of the sea or of the River Humber below the low-water mark.

8. In answer to paragraphs 17, 18, and 19—We admit the statements therein made and crave leave to refer to the documents therein mentioned.

9. In answer to paragraph 20—We say that the description of the premises by the said Letters Patent of 4 & 5 Philip and Mary as having been part of the possessions of Edward then late Duke of Buckingham is not mistaken and erroneous in several or any respects. The manor of Holderness did and does exist and was held by Edward then late Duke of Buckingham and upon his attainer was taken into the hands of the Crown in the thirteenth year of King Henry the Eighth and the ministers of the Crown rendered yearly accounts of the said lordship of Holderness into the Exchequer under the title of “Dominium de Holderness parcel of the lands and possessions of the late Duke of Buckingham of high treason attainted” from 13 Henry VIII. until 4 & 5 Philip and Mary. The said ministers rendered accounts of the profits of the said lordship which included the manors of Lelley Dyke Little Humber Preston and other manors which were then the demesne manors of the said lordship and manor of Holderness. They also rendered accounts of the profits of wardships reliefs of tenants throughout the whole lordship of Holderness. They also rendered account of the four divisions of the wapentake called by the names of Tunstall Moyse Dounceley and Helpstone. They further rendered account of the profits of “groundage upon the soil of the King in any vill or places by the coasts of the sea or Humber within the liberty of this lordship.” They answered for the profits of fisheries and ports tolls of boats rents of fishing engines fixed in the Humber wrecks of the sea royal fish happening “infra dominium prædictum.” They take credit in their accounts for making jetties in the sea and defences against the river. The said accounts are continued down to 4 & 5 Philip and Mary. The profits returned by the said ministers are all specified in the particular made out by the King’s Auditor for the grant to the Earl of Westmoreland under the title of “The Lordship of Holderness with its members in the County of York.” The said lordship and manor was granted by the said Letters Patent of 6th February 4 & 5 Philip and Mary to Henry Earl of Westmoreland by the description of “The Lordship and Manor of Holderness with all its rights members and appurtenances in the County of York” and the minister of the Crown in his account for the year 5 & 6 Philip and Mary recites the said grant and states that he does not answer for the profits of the said lordship because it had been granted by the said Letters Patent to the Earl of Westmoreland and he is discharged. We say that the description of the premises purported to be granted by the said Letters Patent is not erroneous or mistaken but that the said lordship and manor of Holderness with all its rights members and appurtenances including the foreshore belonging to and parcel of the same passed by the said Letters Patent

to our predecessor in title to hold to him and his heirs and assigns as fully and freely and entirely and in as ample manner and form as the said Edward late Duke of Buckingham or any other or others theretofore having possession or being seized of the same premises or any part thereof ever had held or enjoyed or might or could have had held or enjoyed in the lordships and manors aforesaid and other the premises and in every parcel thereof by reason or pretext of any charter gift grant or confirmation or of any Letters Patent by them or by any of their progenitors theretofore in any manner made or granted or confirmed or by reason or pretext of any lawful prescription use or custom theretofore had or used or otherwise by whatsoever lawful manner right or title. We further say that by virtue of the said Letters Patent we and our predecessors have held and enjoyed the said lordship and manor and the foreshore belonging to and parcel of the same and the hundred and wapentake and other franchises and incorporeal rights mentioned in the said Information and we say that the said lordship and manor lands tenements and hereditaments including the said foreshore and the rents issues and profits thereof have been held and enjoyed and received and taken by us and our ancestors and predecessors from the date of the said Letters Patent and in particular for the space of sixty years and upwards next before the filing of the original Information in the present cause and that the said lordship and manor lands tenements and hereditaments including the said foreshore and the revenues issues and profits thereof have not been in charge to Her Majesty or Her predecessors and have not stood in super of record within the space of the said sixty years but have belonged to us and our predecessors and ancestors during all that time and we claim the benefit of the Statutes of 9 Geo. III. c. 16, 24 & 25 Vict. c. 62, and of all other Statutes passed for quieting possessions and titles against the Crown and of 3 & 4 Will. IV. c. 27 and of the Real Property Limitation Act 1874 and of all other Statutes passed for the limitation of actions and informations and suits and we rely upon the same as a Defence to the said Information and Bill and pray that the said Information and Bill and Amended Information and Bill may be dismissed with costs.

10. In answer to paragraph 21—We say that it is not true as alleged in the said Amended Information that the aforesaid Edward Duke of Buckingham and other persons before him from time to time held by grant from the Crown certain possessions in Holderness including the manor of Burstwick in the said Letters Patent mentioned (which is incorrectly stated in the said Amended Information to be an inland manor) and other manors and including also the hundred or wapentake of Holderness with the franchise or right of perception of wreck within the limits of the hundred except in places in which such franchise had previously been granted by the Crown to some other person or persons and other rights and franchises annexed to or held with the said hundred nor that the hundred of Holderness together with the other franchises and incorporeal rights usually granted therewith was sometimes called “the lordship of Holderness.” On the contrary we say that the lordship of Holderness which has been sometimes called the manor of Burstwick with its members as in our former Answer appears is a great manor seignory lordship or fee which comprises the local manor of Burstwick (which is not an inland manor as alleged in the said Amended Information but comprises the hamlet or manor of Preston adjoining the River Humber) together with other manors and that the hundred and wapentake of Holderness is parcel of and annexed and incident to the said lordship and manor of Holderness and that the right to the

perception of wreck of the sea appertains to the said lordship and manor and that such right to the perception of wreck extends to all such portions of the shore of the sea and the River Humber as are within and parcel of the said lordship and manor except where such franchises had been granted out by the Crown at a period anterior to the formation of the said lordship and excepting in places where such franchise has been granted by the lords of the said lordship to some other person or persons. The lordship of the hundred of Holderness was granted by the said Letters Patent of 4 & 5 Philip and Mary as parcel of and annexed and incident to the lordship and manor of Holderness and the said other franchises and incorporeal rights were also granted by the said Letters Patent and passed to our predecessors in title and to us as parcel of the said lordship of Holderness. We deny that the said hundred or wapentake of Holderness and the said franchises ever belonged to the honor of Albemarle except in so far as the owners of the honor of Albemarle for the time being enjoyed them as parcel of the lordship of Holderness which said lordship we aver was an integral lordship and a *grossum per se* forming part of the possessions of the Earls of Albemarle down to the time that the said possessions escheated to the Crown and that the said hundred or wapentake and the said incorporeal rights and franchises were enjoyed by the successive owners of the lordship and manors of Holderness as parcel of and appurtenant to the said lordship and manor and not in right of any honor of Albemarle. We say that the Information filed by the Attorney-General of King Charles I. against Henry Viscount Dunbar in Hilary Term 13 Charles I. A.D. 1637-8 was illegal and oppressive and that the said Viscount Dunbar in his Answer thereto claimed the said hundred or wapentake and the said incorporeal rights and franchises as parcel of the lordship and manor of Holderness and that he took the grant made by the Letters Patent of 8 January 1641 to quiet his title only.

We further say that King Charles II. by his Letters Patent dated 31 December 1665 recognised the title of John Viscount Dunbar to the lordship and manor of Holderness under the Letters Patent of 4 & 5 Philip and Mary and thereby after reciting that the liberty of Holderness was an ancient liberty and that the lords of the manor of Burstwick and the lordship of Holderness had enjoyed divers rights jurisdictions royalties franchises liberties profits commodities emoluments pre-eminences and hereditaments within the same liberty and within the whole wapentake and hundred of Holderness the King being willing that from thenceforth and for ever thereafter the said John Viscount Dunbar his heirs and assigns lords of the lordship and manor of Holderness might hold unimpaired the liberty of Holderness aforesaid and his royalties and franchises there as well by prescription as by virtue of the said several Letters Patent aforesaid confirmed to him the said wapentake and hundred and the said incorporeal rights and franchises including wrecks of the sea and Royal fish in and upon the shores and coasts of the sea within the flow and ebb of the sea in whatsoever places and within whatsoever towns townships tithings and hamlets within the liberty of Holderness aforesaid and within the aforesaid wapentake and hundred of Holderness or any parcel thereof as well next the high sea as next the banks of the River Humber there from time to time happening chancing coming arising found and to be found.

11. In answer to paragraph 22—We say that we do not admit the statements therein contained or any of such statements and we also say that in Sir Henry Constable's case (43 Elizabeth) which was an action by our predecessors in title against the officer of the Lord High Admiral for taking wreck within the manor

and fee of Holderness the jury found that King Philip and Queen Mary granted to the Earl of Westmoreland the manor and fee of Holderness and wrecks of the sea within the precinct of the said manor and fee happening and that Sir Henry Constable was entitled to the wreck cast on the foreshore of the manor and fee of Holderness but not to wrecked goods found floating over the said foreshore.

We further say that Sir Henry Constable did claim a manor of Holderness and a title to wreck within that manor and that Henry Viscount Dunbar his successor in title and our predecessor made the same claim in answer to the Information filed against him by the Attorney-General of King Charles I. and therein claimed that he held the manor of Holderness with appurtenances and wreck in the aforesaid manor and that he did not abandon any claim to any supposed manor of Holderness but that he claimed the manor of Holderness and the foreshore thereof and the wrecks thereon happening in the same manner that we claim now.

12. In answer to paragraph 23—We say that in an Information by the Attorney-General against William Constable in Trinity Term 2 Geo. III. the Attorney-General admitted that the lordship of Holderness extended to the low-water mark and especially charged that neither the manor of Little Humber nor the liberty of Holderness extended beyond the low-water mark and that the sand called Cherry Cob Sand was an island separated from the mainland. Sir William Constable in his Answer claimed the Cherry Cob Sand as parcel of the superior lordship and manor of Holderness and situate within the inferior demesne manor of Little Humber and that it lay within the low-water mark. We further say that the whole contention in the case was as to whether Cherry Cob Sand was an accretion to the foreshore of the lordship of Holderness or an island separated from the said foreshore by a navigable channel and that the said suit did as herein appears relate to foreshore and more particularly that the Attorney-General had leave of the Court to amend his Information by striking out the word "island" in three different parts thereof after the words "Cherry Cob" and inserting in the room thereof the word "Sand."

We also say that the question in the case was whether Cherry Cob Sand when it first arose in the river was separated from the shore by a channel which was full at low-water mark or was dry and that the evidence was directed to the trial of this question and that the verdict and judgment passed for the Defendant our predecessor in title.

We further say that in the further legal proceedings mentioned in the 23rd paragraph of the Amended Information the said William Constable filed a Bill in the Exchequer against the Attorney-General in Hilary Term 4 Geo. III. wherein he recited the proceedings on the former Information and claimed the Cherry Cob Sand as being within the low-water mark of the superior lordship and manor of Holderness and particularly as parcel of the inferior demesne manor of Little Humber opposite to the high-water mark in which inferior demesne manor the said Cherry Cob Sand was locally situate.

The litigation was ultimately compromised.

The Act of Parliament confirming the compromise recognises the title of the said William Constable to the Cherry Cob Sand as parcel of his seignory of Holderness and saves his rights as lord of that seignory.

13. In answer to paragraph 24—We say that we and our predecessors in title have from time immemorial claimed and received the profits of wreck on all parts of the foreshore now claimed by us and that our right thereto has been

admitted by the Crown and that we and our predecessors have from time immemorial exercised all and every kind of acts of ownership over the whole of the said foreshore and have enjoyed and used the said foreshore in every way in which it is capable of being enjoyed and used and have granted leases and licences dealing with the said foreshore openly as of right and not secretly as alleged and that such acts of enjoyment have been open and notorious to all the country and were well known to the officers of the Crown. We further say that we deny that the Crown and its grantees have from time to time openly and as of right dealt with various parts of the foreshore of the sea and of the River Humber now claimed by us and exercised acts of ownership over the same by making and maintaining jetties embankments reclamations and other works and otherwise without any interruption by us and without any recognition of title in us or our predecessors except in so far as the Crown and its grantees have done such acts upon the foreshore (if any) of the River Hull or opposite to the Citadel of Hull which we do not claim as hereinbefore appears but we further say that although the officers of the Crown were in and after the year 1869 well aware of our title and claim to the said foreshore they nevertheless secretly and under colour of the general *primâ facie* title of the Crown between the years 1869 and 1875 made leases to divers persons of small portions of the foreshore at Withernsea and Owthorn at small rents by way of acknowledgment and that such grants and leases were secretly made and without our knowledge and without communication with us or our solicitors and we submit to the Court that such secret acts are no evidence of possession or title in the Crown.

14. In answer to paragraphs 25, 26, 27 and 28—We say that it is our object to deny the title of Her Majesty to the foreshore in question and we make out our title to the said foreshore in manner as appears herein and in our former Answer. We say that Her Majesty has no right to grant or lease the said foreshore but that it belongs to us subject to the right of navigation and other public rights thereon.

15. In answer to paragraph 29—We say that the manors with respect to which we make an alternative claim to the foreshore are the following—

The local manor of Burstwick including the manor or hamlet of Preston abutting on the River Humber situate in the township of Preston.

The manor of Withernsea with Owthorn and the manor of Withernsea with Owthorn Priorhold parcel of Kirkstall situated in the townships of Withernsea and Owthorn.

The manors of Easington Kilnsea and Skeffling in the townships of Easington Kilnsea and Skeffling abutting upon the sea and the River Humber.

The manor of Skipsea and Cleaton in the township of Skipsea abutting on the sea.

The manor of Little Humber in the township of Little Humber abutting on the River Humber.

The manor of Paull has been sold by our predecessor in title reserving the seigniorial rights of the lord of Holderness.

We claim the foreshores of these manors as being co-extensive with the townships named and our title thereto is the same as our title to the lordship and manor of Holderness as hereinbefore and in our former Answer is set forth.

16. In answer to paragraph 30—We say that we have in our Answer to the original Information set forth all the Letters Patent deeds maps plans manu-

scripts and other books papers and writings and all other documents relating to the matters in question in this suit in our possession or power as well relating to the alternative claim to foreshore in respect of our particular manors as in respect of the lordship of Holderness and they have been inspected during a period of several months by the solicitor of the Board of Trade and Mr. Hewlett the Keeper of Her Majesty's Records of the Land Revenue Department and we say that we have no further or other documents in our possession or power to set forth except such documents as have been made out and procured expressly for the purpose of the pending litigation since the filing of such Answer and which documents are privileged from production.

ANSWERS TO INTERROGATORIES.

1. In paragraph 4 of our Answer to the former Interrogatories in this suit we have set out the present boundaries of the manor or lordship of Holderness. We believe that the ancient boundaries of the wapentake of Holderness were as follows—1. The North Sea. 2. The River Humber. 3. The River Hull. 4. On the north a line from Barmston Beck to Frodingham Bridge or near thereto and as we believe formerly called the Earl's Dyke but we say that in ancient times the River Hull fell into the River Humber at a point further westward than the present River Hull and that the district lying between the ancient River Hull and the modern River Hull near its mouth has been severed from the ancient wapentake. The site of the citadel of Hull and its appurtenances has also been severed from the said wapentake.

The River Hull is tidal and navigable for small river craft up to a place called Hempholm or thereabouts for a distance of about 15 miles following the course of the said river but whether or not the said river was navigable and tidal before it changed its course and fell into the Humber at its present mouth we do not know and cannot answer as to our belief or otherwise.

2. We believe that there was anciently a certain great estate belonging to the Earls of Albemarle and sometimes called the honor of Albemarle which was so called from the name of the Earls of Albemarle who were the owners of such estate. The origin of such estate was as follows:—King William the Conqueror gave his sister to Odo Earl of Champagne in marriage and after the marriage granted him "Insulam de Holderness." The Archbishop of Rouen gave to the said Odo the city of Albemarle that he might be the Archbishop's standard bearer in expeditions with ten knights. The King subsequently gave to the said Odo the vill of Bytham with its appurtenances and many other possessions. The grandson of the said Odo William Le Gros acquired the manor of Skipton in Craven by marriage. The Earls of Albemarle acquired other manors and possessions and their estate was sometimes called the honor of Albemarle but we say that so far as we know and can discover it was never called a "fief" and we do not know and submit to the Court whether the word "fief" when used to describe any possessions or lands in England has any and what meaning. The said so-called honor comprised several integral lordships of which the lordship and manor of Holderness was one and we say that the said lordship and manor was in existence and was held by our predecessors in title before any so-called fief or honor of Albemarle came into existence. We believe that the possessions of the Earls of Albemarle as above described came into the hands of the Crown in or about the year 1273 after the death of Avelina de Fortibus the sole heiress of the Earls of Albemarle but we say that the said possessions were

not described as the honor of Albemarle but that they were accounted for by various officers of the King in various counties and that the manors of Burstwick and Pocklington and Skipton in Craven were accounted for in the Exchequer by Thomas de Willeby as the King's escheator and by Thomas de Normanville the steward and keeper of the King's demesnes beyond Trent by the name of "The lands which were of Avelina daughter and heir of the Earl of Albemarle" and we further say that there is no account of the honor of Albemarle as an integral lordship and *grossum per se* and that the profits of the lordship and manor of Holderness sometimes called "the manor of Burstwick with its members" and all the lands tenements hereditaments and all the rights franchises knight's fees wardships wreck of the sea liberties and privileges and emoluments belonging to the Earls of Albemarle within the lordship and manor and the wapentake of Holderness were accounted for in the Exchequer by the officers appointed by the King to collect such profits as part of and belonging to the said lordship and manor of Holderness and not as belonging to or parcel of any fief or honor of Albemarle and that from the time the said possessions of the Earls of Albemarle came into the hands of the Crown the said profits have been returned as parcel of and belonging to the said lordship and manor of Holderness and accounted for to the Crown and to the various lords of the said lordship and manor to whom the Crown has granted the said lordship and manor from time to time and to us and our predecessors in title from the time of the date of the Letters Patent of 4 & 5 Philip and Mary. It is we believe the fact that the said alleged fief or honor of Albemarle was never again granted out as a fief or honor and a *grossum per se* after the said possessions of the Earls of Albemarle came into the hands of the Crown but we say that the various lordships and manors or some of them of which the said alleged honor was anciently composed were granted out to divers persons at divers times as separate and distinct lordships and we aver that the said honor if it ever existed as a *grossum per se* by force of such grants has been dismembered and has ceased to exist in fact and in law and that none of the possessions of the Earls of Albemarle are in the hands of the Crown as parcel of the said alleged fief or honor and that such honor is not now in the hands of Her Majesty. Alternatively we say that if such honor does exist in fact or in law and is in the hands of Her Majesty nevertheless the lordship and manor of Holderness has been and is with all its rights members and appurtenances and particularly with the foreshore parcel of and belonging thereto severed from the said honor and is now vested in us as a *grossum per se* and was held of Her Majesty and Her predecessors by the fee farm rent of £553 3s. 4d. specified in the said Letters Patent of 4 & 5 Philip and Mary until we purchased the said rent of the grantee of the Crown. We further say that the various liberties franchises and privileges stated in the Information filed by the Attorney-General against Henry Viscount Dunbar in 13 Charles I. including wreck of the sea and of the River Humber to have been parcel of the said alleged fief or honor of Albemarle were not so parcel but were parcel of the lordship and manor of Holderness and were accounted for by the bailiffs and receivers of the said lordship and manor as parcel of and belonging to that lordship and manor from the time that the possessions of the Earls of Albemarle escheated to the Crown down to the date of the Letters Patent of 4 & 5 Philip and Mary and have been and are now parcel of that lordship and manor and now belong to us as parcel of the said lordship and manor of Holderness. We further say that the said liberties franchises and profits including wreck of the sea and of the River Humber previous to the filing of the said Information of

13 Charles I. or previous to the second year of the reign of Queen Elizabeth therein mentioned were not in charge to the Crown as parcel of the honor of Albemarle. We further say that if King Charles I. had any rights liberties or privileges within the lordship and manor of Holderness in right of the honor of Albemarle (which we deny) he nevertheless granted to the said Henry Viscount Dunbar by his Letters Patent dated 8th January 1641 all and every such rights liberties and privileges. We further say that even if King Charles I. were seized of the honor of Albemarle in the 13th year of his reign he did not die seized of it and that there is not any survey of any such honor made by the Commissioners of the Parliament of the Commonwealth when they surveyed the Crown Lands although the said Commissioners return surveys of the honors of Penrith Bradninch Berkhamstead Clitheroe Bolingbroke Hampton Tutbury Clare Knaresborough Pontefract and Tickhill as being part of the possessions of the then late King Charles I. and we say that the Crown is not and has not been for the space of 60 years and upwards before the filing of the aforesaid Information in the present case seized of any lands tenements or hereditaments within the ambit of the said lordship and manor of Holderness in right of the said alleged fief or honor of Albemarle but we aver that we and our predecessors in title have been seized and possessed of the said lordship and manor of Holderness and the foreshore belonging to and parcel thereof from the date of the said Letters Patent of 4 & 5 Philip and Mary to the present day.

3. The foreshore of the River Humber along the hundred of Holderness is of considerable extent and large value. There is practically no foreshore to the River Hull and having regard to the nature of the banks of that river we believe that there never was any foreshore of any value in that river but we do not claim it and do not know as to its extent or value or otherwise. Parts of the foreshore of the River Humber opposite to the site of the citadel of Hull and its appurtenances have as hereinbefore in our Answer appears been embanked and built on and sold and otherwise publicly dealt with by the Crown and its grantees without recognition of any right or title thereto in us the Defendants or our predecessors and without claim by us but we say that the said parts of the said foreshore were severed from the lordship and manor of Holderness before the date of the said Letters Patent of 4 & 5 Philip and Mary and we do not claim the same as hereinbefore in our Answer appears. We believe that Queen Elizabeth King Charles II. and others of Her Majesty's royal predecessors did as hereinbefore appears construct and maintain on part of the said foreshore belonging to the site of the citadel of Hull fortifications jetties and other works in connection with the citadel of Hull and did exercise other acts of ownership over the said portion of foreshore.

4. In answer to Interrogatory No. 4.—We say that the portions of foreshore therein referred to are portions of foreshore opposite to the site of the citadel of Hull and its appurtenances and that we do not know and are unable to set forth what acts have been done by the Crown and its grantees on the said portion of foreshore opposite the site of the citadel of Hull and its appurtenances as it is not within the lordship and manor of Holderness. We do not know and cannot answer as to our belief or otherwise whether the conveyances of such foreshore extend over a period of 70 years or over what other period. They have been made and carried out without any suggestion or claim of title on our part or on that of our predecessors. We and our predecessors as stated in our Answer believed that we had no title to such foreshore opposite to the site of the citadel and its appurtenances and made no claim.

5. Except as to the several grants stated in the 7th paragraph of the Amended Information we do not know and cannot answer as to our belief or otherwise whether a succession of or what grants in particular have been made between 1802 and 1874 by the Crown of further portions of the foreshore of the River Humber along the hundred of Holderness between the confluence of the Humber and Hull and Hedon Haven and we say that if any such grants have been made they have been made without any notice to us or our agents and have been made secretly and not publicly by Letters Patent. We are not permitted by the officers of the Crown to search the enrolments of such grants and have no means of ascertaining whether such grants have been made or not and we say that if any grants have been made of any portions of foreshore between the site of the citadel of Hull and its appurtenances and Hedon Haven they have been made without title and are invalid. None of the foreshore between the site of the citadel of Hull and its appurtenances and Hedon Haven had so far as we know up to the year 1878 been embanked built on or used for commercial or other purposes by the Crown grantees except that a lighthouse has been erected at Preston by the Trinity House authorities under their pretended lease on foreshore which is the subject of the present litigation. We believe that the several indentures specified as Nos. 1 to 7 in the 7th paragraph of the said Amended Information were made as stated but we have not seen them and are not able to have access to the enrolments thereof and we crave leave to refer thereto when they shall be produced.

6. We do not contend that the foreshore adjacent to the site of the citadel of Hull stands as regards our present claim on a different footing from the rest of the foreshore of the River Humber along the ancient limits of the hundred of Holderness as having been granted out by King Edward VI. but we say that neither we nor our predecessors since the time of King Edward VI. or since the building of the said citadel have ever had or claimed any right to the said foreshore opposite to the citadel and its appurtenances and that it is not within our lordship and manor as hereinbefore appears in our Answer to paragraph 5 of the said Amended Information. We believe that it is the fact that King Edward VI. committed to the Corporation of Hull the custody of the citadel on behalf of the Crown but we do not know whether King Edward VI. granted the foreshore to the Corporation of Hull or not. We believe that he granted the custody of it to the said Corporation and that the Corporation did certain acts thereon. Whether the freehold of the said foreshore remains in the Crown or not we do not know and cannot answer as to our belief or otherwise and we submit to the Court whether we are to be compelled to answer as to the title to land to which we make no claim and which is not in our possession and over which we have done no act of ownership.

7. We did commence the actions referred to in this Interrogatory and did deliver the Statements of Claim therein mentioned.

8. We believe that Lelley and Dike and Little Humber are and were demesne manors belonging to the lordship and manor of Holderness at the time of the granting of the Letters Patent of 4 & 5 Philip and Mary. Preston was also we believe a demesne manor of the said lordship. At the present day the following manors named in the Letters Patent of 4 & 5 Philip and Mary form part of and are dealt with at the Courts held for our local manor of Burstwick :—

Preston.

Lelley or Lelley Dyke.

Sproatley.
 Elsternwick.
 Burton Pidsea.
 Skeckling.
 Burstwick or Bond Burstwick.
 Kayingham.

We are seized of the manors of Withernsea with Owthorn and Withernsea with Owthorn Priorhold parcel of Kirkstall the manors of Easington Kilnsea and Skeffling the manors of Skipsea and Cleaton the manor of Little Humber. The seignorial rights of the lord of Holderness were reserved to us in the manor of Paul on a sale thereof made by our predecessors in title. The town of Hedon is held of us by a fee farm rent.

Tunstall Moyse Dounceley and Helpston are at the present day or lately were the titles of the four divisions or bailiwicks of the wapentake of Holderness. There is a township called Tunstall within the lordship and manor of Holderness but whether there was or is a manor of Tunstall or any manors of Moyse Dounceley or Helpston we know not but we say that the lordships and manors of Preston Lelley Dyke and others mentioned in the said Letters Patent of 4 & 5 Philip and Mary were granted to us by the said Letters Patent as inferior lordships separate and distinct from the superior "lordship and manor of Holderness with all its rights members and appurtenances in the County of York then late parcel of the lands possessions and hereditaments of Edward late Duke of Buckingham" and that the description of the said manors in the Letters Patent is not therein made by way of limitation or description of the said superior lordship and manor of Holderness and that the grant of the said lordship and manor of Holderness is in no wise affected by the mention of the said manors of Preston Lelley Dyke and others in the said Letters Patent.

The manor of Burstwick and the parks of Burstwick mentioned in the said Letters Patent are the local manor of Burstwick called the local manor to distinguish it from the lordship and manor of Holderness which is sometimes described as the manor of Burstwick with its members. It is not wholly an inland manor as it comprises the sub-manor or hamlet of Preston which extends to the Humber. Save as hereinbefore appears we are unable as to our belief or otherwise to answer the 8th Interrogatory.

9. We have answered the 9th Interrogatory in our Answer to the 29th paragraph of the Amended Information to which we crave leave to refer.

10. We have answered the 10th Interrogatory in our Answer to the 30th paragraph of the Amended Information to which we crave leave to refer.

[Signed by Counsel to the Defendants.]

F. A. T. C. CONSTABLE.	{	Sworn by the Defendant Sir Frederick Augustus Talbot Clifford Constable at the Town and County of the Town of Kingston-upon-Hull this twenty-eighth day of July 1885.
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Before me

HENRY SAXELBYE,
 A Commissioner to administer Oaths in the
 Supreme Court of Judicature.

THOS. CONSTABLE. { Sworn by the Defendant Thomas Constable at
Otley in the County of York this thirtieth day of
July 1885.

Before me

JOHN FAWCETT,

A Commissioner to administer Oaths in the
Supreme Court of Judicature.

Filed on behalf of the Defendants.

English Information claiming the Property of an Extinct Corporation.

Filed 16 May 1888.

As of Easter Sitzings 51st Victoria.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

(Queen's Remembrancer.)

Between HER MAJESTY'S ATTORNEY-GENERAL (on behalf of
Her Majesty) - - - - - *Informant*
and

HENRY HOMEWOOD CRAWFORD, CHARLES JOHN SHOPPEE,
CHARLES GEORGE HALE, ALBERT JOSEPH ALTMAN,
JOHN CHARLES BELL, ADAM WILLIAM BURN, FREDERICK
RICHARD THOMAS, and GEORGE HIBBERT - - - *Defendants.*

INFORMATION.

To the Right Honorable John Duke, Baron Coleridge, Lord Chief Justice
of England and to the rest of the Justices and Barons of the Queen's
Bench Division of the High Court of Justice there.

[NOTE.—The title and formal parts have been retained. For the present
form, see the precedents printed below, pp. 314, 326.]

Informing sheweth unto their Lordships Sir Richard Everard Webster Knight,
Her Majesty's Attorney-General on behalf of Her Majesty as follows:—

1. His Majesty Charles I. late King of England Scotland France and Ireland
on September 10th in the 14th year of his reign (A.D. 1639) granted a charter
which (omitting certain parts not material here) was in the words following:—
[*The material parts of the charter of the Glovers' Company are set out.*]

2. On September 8th 1853 (the day of the nativity of the Blessed Virgin
Mary) the election day of the said Company and Corporation an election
purported to be held at the London Tavern Bishopsgate Street in the City of
London at which there were present Samuel James Wood who then purported
to be the last master of the said Company and Corporation Daniel Hazard and
William Ullathorne who then purported to be two of the last wardens of the
said Company and Corporation and seven other persons who purported to be
members of the Court of Assistants of the said Company and Corporation but
the Attorney-General charges that the persons so assembled together did not
constitute the greater part or number of the master wardens assistants and
fellowship of the said Company and Corporation and the said persons being so
assembled together purported to proceed to the election of a master wardens

clerks and beadle of the said Company and Corporation and they purported to elect the said William Ullathorne master of the said Company and Corporation the said Daniel Hazard and one Richard Hopkins one Edward Hibbert and one John Swaine to be wardens of the said Company and Corporation and Richard Thomas and Frederick Richard Thomas clerks and Frederick Augustus Hughes beadle of the said Company and Corporation all for the then ensuing year.

3. On September 8th 1854 (the day of nativity aforesaid) there being present at the London Tavern aforesaid the said William Ullathorne the said Daniel Hazard and the said Edward Hibbert and eight other persons purporting to be members of the Court of Assistants of the said Company the persons so assembled together purported to proceed to the election of a master wardens clerks and beadle of the said Company and Corporation for the then ensuing year but the Attorney-General charges that the said persons did not constitute the greater part or number of the master wardens assistants and fellowship of the said Company and Corporation. They then purported to elect Daniel Hazard master Richard Hopkins Edward Hibbert John Swaine and Thomas Clarke wardens and the same persons as above mentioned clerks and beadle of the said Company and Corporation.

4. At the London Tavern aforesaid on September 8th, 1855 (being the nativity aforesaid) there were assembled the said Daniel Hazard and the said Thomas Clarke who purported to be elected master and warden respectively as aforesaid but no other warden and six other persons purporting to be members of the Court of Assistants of the said Company and Corporation but the Attorney-General charges that they did not constitute the greater part or number of the master wardens assistants and fellowship of the said Company and Corporation nor were they in any respect duly constituted as required by the said charter when so assembled together to proceed to the election of master and wardens or officers of the said Company and Corporation but nevertheless they proceeded to the election of a master wardens clerks and beadle of the said Company and Corporation for the then ensuing year and pretended to elect the said Edward Hibbert master of the said Company and Corporation John Swaine Thomas Clarke Robert Thomas Cozens and Thomas Peachey wardens of the said Company and Corporation and the persons above-named clerks and beadle respectively for the then ensuing year. The Attorney-General charges that the persons whom the said persons purported to so elect were not duly elected in accordance with the charter above set forth but nevertheless disregarding their defective election the said persons proceeded to take upon themselves and to exercise the offices to which they pretended to be so elected as aforesaid.

5. The Attorney-General charges that on no subsequent occasion was any master nor a proper number of wardens nor any warden or clerk or beadle of the said Company and Corporation elected in accordance with the said charter and thenceforth down to the present time there has been no duly elected master or wardens or clerk or beadle of the said Company and Corporation although divers persons from time to time purported to exercise and hold the said offices in the said Company and Corporation.

6. On September 9th 1872 the said Edward Hibbert purported to elect the Defendant George Hibbert master of the said Company and Corporation and Robert Alexander Gray John Swaine Edward Hibbert and Thomas Clarke wardens of the said Company and Corporation. The only persons present at such election being the said Edward Hibbert and the Court of Assistants then

purporting to consist solely of the said five persons. On September 8th 1873 the said George Hibbert alone being present and the Court of Assistants purporting to consist of the said five persons the said George Hibbert purported to elect the said Edward Hibbert master and the said Robert Alexander Gray Thomas Clarke and George Hibbert wardens. On September 8th 1874 and September 8th 1875 the said offices were interchanged between the said four persons there never being present more than one person at such pretended election. The said Edward Hibbert died on March 1st 1876. On October 26th 1876 George Hibbert alone being present and the Court of Assistants then purporting to consist of the said John Swaine Thomas Clarke Robert Alexander Gray and the said George Hibbert the last-named purported to elect himself and the said three last-named persons respectively to the offices of master and wardens of the said Company and Corporation and again on September 8th 1877 the said George Hibbert alone being present he pretended to elect himself and the said three persons respectively to the offices of master and wardens of the said Company and Corporation. The said Robert Alexander Gray died on December 10th 1877. On September 7th 1878 and September 8th 1879 the said George Hibbert alone being present pretended to elect himself master and the said Thomas Clarke and John Swaine wardens of the said Company and Corporation. On September the 8th in the years 1880 to 1885 inclusive the said George Hibbert alone being present pretended to elect himself on each occasion master of the said Company but no persons were elected wardens of the said Company and Corporation.

7. The Attorney-General charges that by reason of the facts above stated the said Company and Corporation has long since become dissolved and ceased to exist.

8. Lately the Defendant Henry Homewood Crawford has pretended to be master of the said Company and Corporation and Charles John Shoppee Charles George Hale Albert Joseph Altman and John Charles Bell have pretended to be wardens of the said Company and Corporation. The Attorney-General charges that they are not such and cannot show any warrant or any lawful election or any right in that behalf yet they arrogate to themselves the right to act as such officers and to act on behalf of the said dissolved Corporation. Other persons including the said George Hibbert above mentioned pretend to be assistants of the said Company and Corporation and the Defendant Burn pretends to be clerk of the said Company and Corporation and another person pretends to be the beadle of the said Company and Corporation by what right in any of the said cases the Attorney-General is ignorant.

9. The said persons pretending to be such officers as above mentioned purport to exercise the rights and powers of the said Company and Corporation and to admit persons to the livery of the said Company and Corporation. As a fact the Attorney-General charges that the only persons living who may have been properly admitted to the membership of the said Company and Corporation are the following Robert Chew William Gosling Joseph Nathaniel Henry Gould Charles Edwin Grace George Hibbert William Lucey Joseph Lucey John William Robins Richard David Rose and Benjamin Scott but the Attorney-General does not admit that they have been in fact properly elected or admitted to the membership of the said Company and Corporation and the Attorney-General charges that in any event the said Company has been dissolved and has ceased to exist as above mentioned.

10. The Attorney-General alleges that there belonged to the said Company before its said dissolution a quantity of plate books documents moneys and other property which by reason of such dissolution has become and is the property of Her Majesty in right of her Crown and by virtue of her Royal Prerogative.

11. There are standing in the books of the Governor and Company of the Bank of England in the names of the Defendants Frederick Richard Thomas and George Hibbert a sum of 2,000*l.* $2\frac{3}{4}$ per cent. consolidated stock (formerly 2,000*l.* 3 per cent. consols) and a sum of 1,800*l.* $2\frac{3}{4}$ per cent. consolidated stock (formerly 1,800*l.* reduced 3 per cents.) as trustees for and on behalf of the said Company and Corporation and the Attorney-General charges that by reason of the dissolution aforesaid Her Majesty is entitled by virtue of Her Royal Prerogative and in right of her Crown to the said two sums and also to the interest thereon.

12. Under the circumstances aforesaid the Attorney-General informs this Honorable Court that the matters in question herein are of great importance to and touch and concern Her Majesty's hereditary revenues and that Her Majesty cannot have adequate or any relief in the premises at law or otherwise than in this Honorable Court.

13. The Attorney-General charges that it ought to be declared that the said Company and Corporation has long since been dissolved and ceased to exist as above mentioned and that Her Majesty is entitled by virtue of Her Royal Prerogative and in right of Her Crown to the said plate books documents moneys and other property aforesaid and to the said two several sums of consols and reduced three per cents. above mentioned and all interest thereon and that the Defendants ought to make full discovery of all property in their hands or in the hands of any of them or in the control or power of them or any of them belonging to the said dissolved Company and Corporation.

14. The Defendants or some of them have now or lately had in their respective possession custody power or control or in the possession custody power or control of their attorneys solicitors or agents divers letters deeds manuscript and other books papers writings memoranda accounts and other documents relating to the matters in question in this suit which they ought to produce.

PRAYER.

The Attorney-General on behalf of Her Majesty prays as follows :—

1. That it may be declared that the said Company and Corporation has been long since dissolved and has long since ceased to exist as such.
2. That it may be declared that the Defendants Crawford Hale Shoppee Altman Bell and Burn were not duly elected and were not holders of any offices whatsoever in the said Company and Corporation.
3. That it may be declared that Her Majesty is entitled by virtue of Her Royal Prerogative and in right of Her Crown to the plate books papers documents moneys and other property whatsoever of the said dissolved Company and Corporation.
4. That Her Majesty is entitled by virtue of Her Royal Prerogative and in right of Her Crown to the said two sums of 2,000*l.* $2\frac{3}{4}$ per cent. consolidated stock (formerly 2,000*l.* consols) and 1,800*l.* $2\frac{3}{4}$ per cent. consolidated stock (formerly 1,800*l.* reduced 3 per cents.) standing in the

names of the Defendants Hibbert and Thomas and to all interest thereon.

5. That the Defendants be ordered to deliver up all plate books papers documents moneys and property above referred to and in their hands power or control respectively.
6. That the Defendants Hibbert and Thomas may be ordered to transfer the said sums of money and interest to such person or persons as Her Majesty may nominate in that behalf.
7. That the Defendants may be ordered to give full particulars of all such property aforesaid in their hands power or control respectively.
8. That the Defendants may make full discovery in the premises.
9. That the Attorney-General on behalf of Her Majesty may have such further or other relief as the case may require.

R. S. WRIGHT.

RICHARD E. WEBSTER.

The Defendants are :—

Henry Holmwood Crawford.
 Charles John Shoppee.
 Charles George Hale.
 Albert Joseph Altman.
 John Charles Bell.
 Adam William Burn.
 Frederick Richard Thomas.
 George Hibbert.

Pleadings on an English Information to recover Crown moneys in the hands of Bankers.

Filed the day of August 1904.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

Between HIS MAJESTY'S ATTORNEY-GENERAL (on behalf of His

Majesty) - - - - - *Informant*
 and

A. B., C. D. and E. F., carrying on business in co-
 partnership under the style of B. & Co. - - - *Defendants.*

INFORMATION.

To the Right Honourable RICHARD EVERARD, BARON ALVERSTONE G.C.M.G.
 Lord Chief Justice of England and to the rest of the Justices of the King's
 Bench Division of the High Court of Justice.

INFORMING sheweth unto their Lordships SIR ROBERT BANNATYNE FINLAY
 Knight G.C.M.G. His Majesty's Attorney-General on behalf of His
 Majesty as follows:

1. Previous to and during the period beginning the 1st day of July 1902 and ending the 1st day of September 1903 the Defendants carried on and still carry

on the trade and business of Bankers in partnership under the style or name of B. & Co. at their bank at X. in the county of Y. and elsewhere.

2. Previous to and during the same period one G. H. was Superintendent of His Majesty's Customs at Z. in Ireland. The said G. H. was appointed to this office in January 1899 at a salary of £160 per annum which was subsequently increased to £200 per annum.

3. This Information relates to certain banking transactions between the Defendants as such bankers as aforesaid and the said G. H. with respect to certain moneys the property of His Majesty received by the said G. H. as such Superintendent of Customs as aforesaid and paid by him contrary to his duty in that behalf into an account in his name at the Defendants' said bank at X. under the circumstances hereinafter mentioned.

4. By "The Exchequer and Audit Departments Act 1866" section 10 and "The Customs Consolidation Act 1876" section 21 it is enacted that all money arising from the duties of Customs in Ireland shall be paid to an account to be intituled "The Account of His Majesty's Exchequer" at the Bank of Ireland.

5. In accordance with these enactments for the purposes of Customs business at the Port of Z. there was kept a local public account at the Z. branch of the Bank of Ireland which said account was kept in the joint names of the Superintendent and Second Officer for the time being of Customs there. Cheques upon this account could only be drawn for the purposes of Customs business and were authorized to be honoured upon the signatures of both officers or in the absence of one from the port upon the signature of the remaining officer. It was the duty of the said G. H. either to pay all duties of Customs into this public account or to lodge the same at the Branch Bank at Z. to the credit of the principal account of the Customs in Ireland kept at the Head Office of the Bank of Ireland at Dublin.

6. As regards the revenue arising from duties of Customs in Great Britain by the said enactments the same are to be paid into the Bank of England to an account intituled "The General Account of the Commissioners of Customs." For the purposes of the Customs business at X. the local public account is kept at Messrs. P.'s Bank there.

7. The Defendants were well aware of these enactments and of the fact that the Customs local account at X. was kept at the Bank of Messrs. P. and Company Limited.

8. Previous to the opening of the account next hereinafter mentioned neither the Defendants nor their officers had ever seen the said G. H. nor had they any knowledge of him nor had the said G. H. any business connection whatever in X. except that between September 1877 and April 1884 he was an outdoor officer of Customs there in receipt of a salary which at no time exceeded £62 per annum.

9. On or about the 18th day of July 1902 a person called at the Defendants' Bank at X. and produced a letter from the said G. H. enclosing a cheque for £175 and asked that an account might be opened in the name of the said G. H. and thereupon an account was opened in the books of the Bank headed:

"G. H. Superintendent Custom House Z.

10. During the said period and on or about the dates hereinafter stated the said G. H. paid into the said account certain cheques and bankers' drafts (copies of which together with the material endorsements thereon are set out in paragraphs 12 to 18 inclusive hereof) and also a certain number of Bank of Ireland notes. The total amount of money represented by the said cheques bankers'

drafts and notes was £4,326 18s. 1d. and this sum of money was received by the Defendants.

11. The said cheques drafts and notes represented moneys due or belonging to His Majesty in respect of duties of customs and were respectively received by the said G. H. as such Superintendent of Customs at Z. aforesaid.

PARTICULARS OF THE SAID PAYMENTS.

12—18. [*Particulars set out.*]

19. During the said period the said G. H. by means of divers cheques on the said account drawn by him in favour of himself or other persons applied for his own private purposes the whole of the said sum of £4,326 18s. 1d. so paid by him to the credit of the said account as aforesaid with the exception of the sum of £1,509 1s. 11d. the balance thereof hereinafter referred to.

20. The said G. H. forwarded to the Defendants at X. the said cheques bankers' drafts and Bank of Ireland notes by letters written by him from his official address namely Custom House Z. At no time during the said period did the Defendants or their officers see the said G. H. nor had they any communication from or with him excepting by the letters before referred to and the letters written by them to him in answer thereto or to other written inquiries made by him. The Attorney-General will refer the Court to this correspondence.

21. The Defendants at the times when they received the said cheques bankers' drafts and Bank of Ireland notes respectively either knew or had reason to believe that the said G. H. was His Majesty's Superintendent of Customs at Z. and that the same had been received by him as such Superintendent of Customs on behalf of His Majesty. The Defendants at the times when they received the moneys in payment of the said cheques and bankers' drafts and also when they received the Bank of Ireland notes either knew or had reason to believe that the said moneys and notes belonged to His Majesty.

22. The Attorney-General alleges that by reason of the premises the Defendants upon the respective dates when they received the moneys in payment of the said cheques and bankers' drafts respectively and upon the date when they received the said Bank of Ireland notes became indebted to His Majesty for the amount of the said moneys and notes received by them with such knowledge or belief as aforesaid.

23. Under the circumstances hereinbefore mentioned it was the duty of the Defendants and incumbent upon them to make all reasonable and proper inquiries with respect to (a) The title and right of the said G. H. to the said cheques bankers' drafts and Bank of Ireland notes (b) his right to pay them into his the said account and (c) his right to draw upon the said account by means of cheques in favour of himself or other persons for his own private purposes. The Defendants nevertheless wholly disregarded their said duty and made no inquiry from any person with respect to any of the matters herein mentioned.

24. By reason of the premises His Majesty has sustained loss and damage to the amount of £2,817 16s. 2d. being the difference between the said sum of £4,326 18s. 1d. and the said sum of £1,509 1s. 11d.

The Attorney-General further informs the Court as follows:—

25. The payment by the said G. H. as such Superintendent of Customs as aforesaid under the circumstances hereinbefore mentioned of the said cheques bankers' drafts and Bank of Ireland notes to the credit of the said account was a breach of trust or duty on his part and the application by him of the whole of

the moneys so paid in amounting to £4,326 18s. 1*d.* excepting the said balance of £1,509 1s. 11*d.* to his own private purposes by means of cheques upon the said account in favour of himself or other persons was a further breach of trust or duty on his part.

26. The Defendants by crediting the proceeds of the said cheques bankers' drafts and Bank of Ireland notes to the said account and honouring the cheques from time to time drawn upon the said account as aforesaid and by neglecting contrary to their duty in that behalf to make such inquiry as aforesaid rendered possible and made themselves parties to the said breaches of trust or duty as aforesaid.

27. The Defendants have now or lately had in their possession custody power or control of their solicitors or agents' books writings memoranda accounts or other documents which relate to the matters in question in this suit all which they ought to produce.

The Attorney-General further informs the Court as follows :—

28. On the 1st December 1903 at the Winter Assizes at Q. in Ireland the said G. H. pleaded guilty to divers charges of larceny and embezzlement committed by him in his office of Superintendent of Customs at Z. aforesaid and on the 2nd December 1903 having previously on the same day executed a deed by which (*inter alia*) the said sum of £1,509 1s. 11*d.* then standing to the credit of the said account was assigned to the Commissioners of His Majesty's Customs was sentenced to penal servitude for three years. The said sum of £1,509 1s. 11*d.* has since been paid by the Defendants to the said Commissioners.

29. The Defendants as such bankers as aforesaid are subject to the provisions of 7 Geo. 4 c. 46 whereby they are bound to appoint public officers for the purposes amongst other things of suing and being sued but no such public officers have been appointed.

PRAYER.

The Attorney-General on behalf of His Majesty prays as follows :—

1. That it may be declared :—

Under paragraphs 1 to 22 hereof.

- (a) That the Defendants are jointly and severally indebted to His Majesty in the sum of £2,817 16s. 2*d.*

Under paragraphs 23 and 24.

- (b) That an account be taken of the loss or damage sustained by His Majesty by reason of the Defendants' said neglect of duty.

Under paragraphs 25 and 26.

- (c) That the Defendants are jointly and severally liable to make good to His Majesty the difference between the said sum of £4,326 18s. 1*d.* and the said sum of £1,509 1s. 11*d.* namely the sum of £2,817 16s. 2*d.*

2. That the Defendants may make full discovery in the premises.
3. That the Attorney-General on behalf of His Majesty may have such further or other relief as the case may require.

R. B. FINLAY.

HENRY SUTTON.

INTERROGATORIES.

Interrogatories for the examination of the above-named Defendants in answer to the Information of His Majesty's Attorney-General.

1. Did you previous to and during the period beginning the 1st day of July 1902 and ending the 1st day of September 1903 carry on and do you still carry on the trade and business of bankers in partnership under the style or name of B. & Co. at your bank at X. in the County of Y. and elsewhere or how otherwise?

2. Previous to and during the same period was not one G. H. Superintendent of His Majesty's Customs at Z. in Ireland? Was not the said G. H. appointed to this office in January 1899 at a salary of £160 per annum which was subsequently increased to £200 per annum or how otherwise?

3. Did you know that for the purposes of the Customs business at X. a local public account was kept at the bank of Messrs. P. & Co. Limited there?

4. Were you aware of the statutes mentioned in the fourth paragraph of the Information or of either and which of them?

5. Previous to the opening of the account mentioned in the ninth paragraph of the Information had you or your managers or officers seen the said G. H. or had any knowledge or information of or about him? And if so what? Had the said G. H. any business connection whatever in X. except that between September 1877 and April 1884 he was an outdoor officer of Customs there in receipt of a salary which at no time exceeded £62 per annum or how otherwise?

6. On the 18th day of July 1902 or on some other and what date did a certain person call at your bank at X. and produce a letter from the said G. H. enclosing a cheque for £175 and ask that an account might be opened in the name of the said G. H. or how otherwise? Give the name and address of such person. Was not an account in fact opened in the books of the bank headed "G. H. Superintendent Custom House Z." or how otherwise? How and in what manner did you obtain the signature of the said G. H.? In answering this interrogatory state all that passed between you your managers or officers on the one hand and the person producing the said letter on the other and what information such person gave you your managers or officers respecting the said G. H.

7. During the said period did not the said G. H. pay into the said account certain cheques and bankers' drafts and also a certain number of Bank of Ireland notes? Was not the total amount of money represented by the said cheques bankers' drafts and notes £4,326 18s. 1d.? Was not this sum of money received by you or on your behalf?

8. Are not copies of the said cheques and bankers' drafts together with the material endorsements and crossings thereon correctly set out in paragraphs 12 to 18 inclusive of the Information? State in what if any particulars such copies are incorrect.

9. Did not the said cheques drafts and notes represent moneys due or belonging to His Majesty in respect of duties of Customs or how otherwise? Were not the same respectively received by the said G. H. as such Superintendent of Customs at Z. aforesaid or in some other and what capacity?

10. On what date did you receive the cheque mentioned in the 12th paragraph of the Information? Was the said cheque handed in at your bank by

the said G. H. or some and what person on his behalf? Was the said cheque forwarded to your bank by letter or in some other and what way?

11. On what date did you receive the Bank of Ireland notes mentioned in the 13th paragraph of the Information? Were the said notes handed in at your bank by the said G. H. or some and what person on his behalf? Were the said notes forwarded to your bank by letter or in some other and what way?

12. On what date did you receive the bankers' draft mentioned in the 14th paragraph of the Information? Was the said draft handed in at your bank by the said G. H. or some and what person on his behalf? Was the said draft forwarded to your bank by letter or in some other and what way?

13. On what date did you receive the cheque mentioned in the 15th paragraph of the Information? Was the said cheque handed in at your bank by the said G. H. or some and what person on his behalf? Was the said cheque forwarded to your bank by letter or in some other and what way?

14. On what date did you receive the cheque mentioned in the 16th paragraph of the Information? Was the said cheque handed in at your bank by the said G. H. or some and what person on his behalf? Was the said cheque forwarded to your bank by letter or in some other and what way?

15. On what date did you receive the cheque mentioned in the 17th paragraph of the Information? Was the said cheque handed in at your bank by the said G. H. or some and what person on his behalf? Was the said cheque forwarded to your bank by letter or in some other and what way?

16. On what date did you receive the bankers' draft mentioned in the 18th paragraph of the Information? Was the said draft handed in at your bank by the said G. H. or some and what person on his behalf? Was the said draft forwarded to your bank by letter or in some other and what way?

17. During the said period did not the said G. H. by means of divers cheques on the said account drawn by him in favour of himself or other persons apply for his own private purposes or for some other and what purposes the whole of the said sum of £4,326 18s. 1d. so paid by him to the credit of the said account as aforesaid with the exception of the sum of £1,509 1s. 11d. or some and what part thereof?

18. As the said G. H. from time to time drew the said cheques did not you your managers or officers know that the same or some and which of them were drawn for his own private purposes?

19. Did not the said G. H. forward to your bank at X. the said cheques bankers' drafts and Bank of Ireland notes or some and which of them by letters written by him from his official address namely Custom House Z.? Give the name of your manager or officer who (a) in fact opened and dealt with the said letters on your behalf? and (b) whose duty it was to do so?

20. Did you your managers or officers at any time during the said period see the said G. H. or have any and what communication from or with him excepting by the said letters and the letters written to him in answer thereto or to other written inquiries made by him?

21. At the time when you received the said cheques bankers' drafts and Bank of Ireland notes respectively did not you your managers or officers either know or believe that the said G. H. was the Superintendent of His Majesty's Customs at Z. and that the same or some and which of them had been received by him as such Superintendent of Customs on behalf of his Majesty or how otherwise? At the times when you received the moneys in payment of the said cheques and bankers' drafts and also when you received the Bank of Ireland notes did not you

your managers or officers either know or believe that the said moneys and notes or some and which of them belonged to His Majesty?

22. Did you your managers or officers at any and what times during the said period make any and what inquiries with respect to (a) the title and right of the said G. H. to the said cheques bankers' drafts and Bank of Ireland notes or (b) his right to pay them into the said account or (c) his right to draw upon the said account by means of cheques in favour of himself or other persons for his own private purposes or otherwise? In answering this Interrogatory you are required to state all inquiries whether verbally or in writing you made during the said period with respect to the said G. H.

23. If in order to answer the preceding Interrogatories you require to see the documents therein referred to such of them as are in the possession or control of the Commissioners of His Majesty's Customs will be shown to you at the office of the Solicitor to His Majesty's Customs Custom House London.

24. Have you not now or lately had in your possession custody power or control or in that of your solicitors or agents books writings memoranda accounts or other documents which relate to the matters in question in this suit? Let the Defendants set forth a full true and particular list or schedule of all such books writings memoranda accounts and other documents as aforesaid distinguishing those now from those not now in their possession custody or power and let them set forth what has become of those which once were but are not now in their possession custody or power and when and to whom and why they parted with or destroyed the same.

Each of the Defendants is required to answer all the foregoing Interrogatories and to answer them to the best of his knowledge information or belief and before answering to make all proper and sufficient inquiries for the purpose of enabling him to do so.

HENRY SUTTON.

ANSWER TO INTERROGATORIES.

The Answer of the above-named Defendants for their examination by the above-named Informant.

In answer to the said Interrogatories we the above-named A. B. and C. D. make oath and say as follows:—

1. To the first of the said Interrogatories we say yes in partnership with one another and with the above-named Defendant E. F.

2. To the second of the said Interrogatories we say that to the best of our information and belief the said G. H. was Superintendent of His Majesty's Customs at Z. during the period referred to but we do not nor does either of us know when the said G. H. was so appointed nor what his salary was.

3. To the third of the said Interrogatories we say that we knew that there was an account at the bank of Messrs. P. & Co. Limited X. in connection with the Customs business at that place but we did not nor did either of us know how the said account was described nor in whose name it stood.

4. To the fourth of the said Interrogatories we say that we were not nor was either of us aware of either of the said statutes.

5. To the fifth of the said Interrogatories we say that previously to the opening of the said account we had not nor to the best of our knowledge information and belief had our managers or officers nor any of us or them seen

the said G. H. We knew that the said G. H. was connected with a very respectable family in the neighbourhood of X. and that he came from W. and we also were informed by Mr. R. as appears hereinafter that the said G. H. was Superintendent of His Majesty's Customs at Z. and we relied upon that information as evidence that he was a person of trustworthy and reliable character. Save as aforesaid we had no knowledge or information with regard to the said G. H. at the time referred to. We are not aware that the said G. H. had any business connection in X. nor were we aware at the time of the opening of the said account that he had been an outdoor officer of Customs there nor of the said salary.

6. To the sixth of the said Interrogatories we say that on 18th July 1902 Mr. R. cashier to Messrs. S. provision merchants of X. called at our said bank and produced a letter from the said G. H. requesting him to open an account in his name and enclosing a cheque for £175. The said Mr. R. is the son of a very old customer of our bank and a neighbour of the said G. H. at W. He requested that an account might be opened in the name of the said G. H. and stated that the said G. H. was Superintendent of Customs at Z. An account was accordingly opened. The heading of the said account in the ledger was "G. H. Superintendent Custom House Z." The signature of the said G. H. was obtained from the said letter. To the best of our knowledge information and belief the above is all that passed upon the said occasion.

7. To the seventh of the said Interrogatories we say yes. The said cheques bankers' drafts and notes were credited to the said account of the said G. H. upon receipt of the same respectively so that he could draw upon the same and were taken by us in good faith and with no knowledge of any defect in the title of the said G. H.

8. To the eighth of the said Interrogatories we say that we believe that the said copies referred to are correct. The original documents are in the hands of the solicitor to the Informant.

9. To the ninth of the said Interrogatories we say that we do not nor does either of us know.

10. To the tenth of the said Interrogatories we say on the 18th July 1902 the said cheque was handed in by Mr. R. on behalf of the said G. H. as stated in paragraph 6 of these our answers.

11. To the eleventh twelfth thirteenth fourteenth fifteenth and sixteenth of the said Interrogatories we say that the notes bankers' drafts and cheques therein referred to were not handed in but were forwarded to our bank by post and that they were respectively received upon the dates appearing in the pass book.

12. To the seventeenth of the said Interrogatories we say that during the said period the said G. H. by divers cheques in favour of himself or other persons drew out the whole of the said sum of £4,326. 18s. 1d. with the exception of £1,509. 1s. 11d. We do not nor does either of us know for what purpose the said G. H. applied the said money or any of it. The dates at which said payments out from the said account were made appear from the pass book.

13. To the eighteenth of the said Interrogatories we say that neither we nor either of us knew for what purpose any of the said cheques were drawn nor to the best of our knowledge information and belief did any of our managers or officers. The said cheques were paid by us in the ordinary course as bankers for the said G. H.

14. To the nineteenth of the said Interrogatories we say that the said letters in which the said G. H. forwarded the said cheques bankers' drafts and Bank of Ireland notes were forwarded are in the hands of the solicitor for the Informant and reference to them will show from what address the said letters purported to be written. We have no information as to the address save as is derived from the said letters themselves. The said letters were opened either by M. the manager or by N. the chief clerk. It was the duty of the two above-named persons to open the said letters.

15. To the twentieth of the said Interrogatories we say that we did not see nor have any such communication as that referred to nor did either of us nor to the best of our knowledge information and belief did any of our managers or officers.

16. To the twenty-first of the said Interrogatories we say that at the time referred to we knew that the said G. H. was Superintendent of Customs at Z. but we had no personal knowledge of the said cheques drafts or notes nor did we or either of us nor to the best of our knowledge information and belief did our managers or officers or any of them have any knowledge or form any belief as to the capacity in which or the purpose for which the said cheques drafts and notes or any of them were received by the said G. H. The said cheques upon being received were passed on in the ordinary routine to a clerk who upon seeing that the same were duly endorsed entered the same to the credit of the said G. H. At the time we received the said money we did not nor to the best of our knowledge information and belief did our managers and officers or any of us or them know or believe that the said money or notes or any of them belonged to His Majesty.

17. To the twenty-second of the said Interrogatories we say that no such enquiries were made. We had not nor to the best of our knowledge information and belief had any of our managers or officers any suspicion whatever with regard to the title or rights referred to in the said Interrogatory.

18. To the twenty-fourth of the said Interrogatories we say that we have in our possession custody power or control the documents relating to the matters in question in this suit set out in the first and second parts of the first schedule hereto. We object to produce the documents set forth in the second part of the said first schedule on the ground that the same are communications between us and our solicitors for the purpose of obtaining and giving legal assistance and advice. We have had but have not now in our possession or power the documents numbered 1, 2, 3 and 5 in the second schedule. Such last-mentioned documents were last in our possession or power on the dates therein stated when they were disposed of as therein mentioned with the exception of those numbered 5 which were handed to the Solicitor to His Majesty's Customs as mentioned in his letter to Defendants dated 1904 May 27. We believe that we have had in our possession custody power or control the documents relating to the matters in question in this suit numbered 4 set forth in the second schedule hereto. If such last-mentioned documents were ever in our possession they were to the best of our knowledge information and belief last in our possession or power in or about the month of January 1903 when we believe they were sent to the said G. H.

19. The above Answers are made by us on behalf of all the above-named Defendants of whom E. F. takes no active part in the management of the affairs of the bank and has no knowledge of the transactions referred to herein.

And I the above-named Defendant E. F. make oath and say—

20. I have not for some years past taken any active part in the management or conduct of the Defendants' business nor have I any knowledge whatever of the matters and transactions referred to in the said Interrogatories.

[Signed by Counsel to the Defendants.]

Sworn by the said A. B. and C. D. at the City } (Signed) A. B.
and County of O. this 23rd day of November } C. D.
1904.

Before me
K. L.
A Commissioner for Oaths.

Sworn by the said E. F. at T. France this 5th day } (Signed) E. F.
of December 1904.

Before me
(Consular Seal.) I. J.
British Vice-Consul.

English Information for an Account and Payment of Railway Passenger Duty.

Trinity Sittings 61st Victoria.
Filed the 9th day of June 1898.

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.
(Queen's Remembrancer.)

Between HER MAJESTY'S ATTORNEY-GENERAL (on behalf of Her
Majesty) - - - - - *Informant*
and
THE A. RAILWAY COMPANY and B. C. - - - - - *Defendants.*

INFORMATION.

To the Right Honourable CHARLES BARON RUSSELL OF KILLOWEN, Lord Chief Justice of England, and to the rest of the Judges of the Queen's Bench Division of the High Court of Justice.

Informing, sheweth unto their Lordships, SIR RICHARD EVERARD WEBSTER, Knight, Her Majesty's Attorney-General, on behalf of Her Majesty, as follows:—

1. By the Act 5 & 6 Vict. c. 79 (section 2 and schedule) there is charged and payable to Her Majesty for and in respect of all passengers conveyed for hire upon or along any railway a duty at and after the rate of £5 for £100 upon all sums received or charged for the hire fare or conveyance of all such passengers.

2. The regulations for charging the duty are contained in that Act and in 10 & 11 Vict. c. 42, ss. 1 and 2; 11 & 12 Vict. c. 118, s. 2; and 26 & 27 Vict. c. 33, s. 13.

3. By section 4 of the said Act 5 & 6 Vict. c. 79 it is enacted in effect that every railway company in Great Britain should keep an account in such manner and form as the Commissioners of Stamps and Taxes should direct or approve of all money received or charged daily by the Company for the hire fare or conveyance of passengers whether on their own railway only or on their own railway and any other railway and in respect of all which sums of money the duties charged by the Act should be paid by the Company receiving or charging the said money and that every such company should within five days after the first Monday in every calendar month deliver to the Commissioners of Stamps and Taxes or to the proper officer appointed for receiving the same a true copy of the accounts so directed to be kept so far as the same should relate to the money received or charged and paid or accounted for as aforesaid during the preceding four or five weeks as the case might be and that with every such account there should be annexed and delivered an affidavit of the secretary chief clerk or accountant of the Company verifying the correctness of such account and that the Company should at the time of delivering every such account pay to the Receiver-General of Stamps and Taxes or to the proper officer authorised by the said Commissioners to receive the same for the use of Her Majesty the duties chargeable under that Act in respect of the money so received or charged as aforesaid and contained in such account.

4. By section 13 of the Act 26 & 27 Vict. c. 33 it is enacted that every railway company in Great Britain shall deliver to the Commissioners of Inland Revenue or to the proper officer appointed for receiving the same within twenty days after the determination of every calendar month a true copy or true copies of the accounts of all sums of money received or charged and paid or accounted for as in the said Act 5 & 6 Vict. c. 79 mentioned during the whole of the calendar month last preceding.

5. By the Cheap Trains Act 1883 (46 & 47 Vict. c. 34) certain alterations were made in the charge of duty and section 2 (1) provides that "Fares not exceeding the rate of one penny a mile shall be exempt from duty but fares for return or periodical tickets shall be exempt from duty only where the ordinary fare for the single journey does not exceed that rate." By section 8 "The term 'fare' includes all sums received or charged for the hire fare or conveyance of passengers upon or along any railway."

6. The Defendants the A. Railway Company is a railway company to which the said Acts apply and duty has been regularly charged on the fares (except so far as they are exempt under section 2 (1) of the Cheap Trains Act 1883) received from passengers conveyed on that railway. It was incorporated on the 23rd May 1844 (7 & 8 Vict. c. xxii.) and its offices are in D. The line extends from E. to F. and covers a distance of miles and there are stations for taking up and setting down passengers.

The general manager and secretary is the Defendant B. C.

7. The third-class fares charged on the said railway have since the passing of the Cheap Trains Act 1883 been reduced and are now at the rate of one penny a mile.

8—13. [*Set out the correspondence and other facts.*]

14. Considerable sums of money are now due to Her Majesty from the Defendant Company for the duty payable by them in respect of the fares received by them for the conveyance of third-class passengers increased to an amount exceeding the limit of exemption defined by the said Act of 1883 by payments for "supplemental reserved accommodation."

15. The Informant submits that under the circumstances herein stated he is entitled on behalf of Her Majesty to the relief hereinafter prayed.

16. The Defendant B. C. is the person who under the provisions of the said Act 5 & 6 Vict. c. 79 ought to have kept and rendered the accounts by that Act required to be kept and rendered but he has refused and still refuses to render proper accounts of fares in respect of which the Defendant Company are liable to duty.

17. The Defendants have in their possession custody or power or in that of their solicitors or agents divers books of account minute books directors' minute books deeds agreements time tables lists of fares letters papers and documents relating to the matters in question in this suit which they ought to produce.

PRAYER.

The Attorney-General on behalf of Her Majesty prays as follows:—

1. That it may be declared that the Defendant Company are liable to pay duty at the rate of £5 for every £100 in respect of all passengers conveyed by them for hire upon or along their said line of railway upon all sums received or charged for the hire fare or conveyance of such passengers (including sums received or charged for what is called by the Defendants "supplementary" or "reserved" accommodation) except where the total fare or sum charged or received does not exceed the limit specified in section 2 (1) of the Cheap Trains Act 1883.
2. That it may be declared that the said Company are not exempt from duty on receipts from tickets issued to third-class passengers for "reserved" or "supplementary" accommodation nor from duty on receipts from other third-class tickets without due proof that such other tickets have not been issued or used in conjunction with "reserved" or "supplementary" tickets so as to make the total fare exceed the limit specified in section 2 (1) of the said Cheap Trains Act 1883.
3. That such inquiries and accounts may be directed as may be necessary to ascertain what fares have been charged by the Defendant Company in respect of which duty ought to have been paid regard being had to the declarations prayed for by the first two paragraphs of this Information and what moneys have been received in respect of such fares, and what duty is owing from the Defendant Company in respect of such fares.
4. That the defendant may be decreed to pay to the Receiver-General of Inland Revenue on behalf of Her Majesty the duty which shall be found owing from them on taking the accounts aforesaid.
5. That the Defendants may be ordered to make full discovery in the premises and to deliver to the Commissioners of Inland Revenue proper accounts of the moneys received by the Defendant Company and of the duty payable thereon.
6. That the Attorney-General on behalf of Her Majesty may have such further or other relief as the case may require.

RICHARD E. WEBSTER.
F. VAUGHAN HAWKINS.

**English Information and Bill for an Account and Payment against the
Executors of a County Court Registrar.**

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

(King's Remembrancer.)

Between HIS MAJESTY'S ATTORNEY-GENERAL (on behalf of His

Majesty) - - - - - *Informant,*

A. B. - - - - - *Plaintiff,*

and

C. D. and E. F. - - - - - *Defendants.*

INFORMATION AND BILL.

To the Right Honourable RICHARD EVERARD, BARON ALVERSTONE, G.C.M.G., Lord Chief Justice of England and to the rest of the Justices of the King's Bench Division of the High Court of Justice there. Informing sheweth unto their Lordships SIR ROBERT BANNATYNE FINLAY Knight His Majesty's Attorney-General on behalf of His Majesty Informant and humbly complaining sheweth unto their Lordships A. B. Registrar of the County Court of Y. holden at X. as follows:—

1. The Defendants are the executors of G. H. deceased who died on 19 . The said G. H. (hereinafter referred to as the Registrar) was appointed Registrar of the County Court of Y. holden at X. in or about the year 18 and continued in that office until his death.

2. The Plaintiff A. B. was appointed Registrar of the said Court as and from 18 .

3. By the County Courts Act 1888 the Treasury Rules made under section 172 of the said Act and the County Court Rules 1889 certain duties with respect to accounts and moneys and the receipt and payment of moneys deposited by trustees under section 70 of the said Act were imposed on the Registrar as stated in the following paragraphs.

4, 5. [*Set out portions of the said Act and Rules.*]

6. Where a Registrar is directed by Order of the Court to draw out of a savings bank the fund standing to the account of any action or matter it is his duty (Order 37 Rule 3) to send a letter to the Treasury requesting them to give the necessary authority to the Postmaster-General. The Treasury on the receipt of such letter address an authority (County Courts Act 1888 s. 71) to the Postmaster-General authorising the payment of the money to the Registrar and a notification to the Registrar that they have done so. The Registrar then gives to the Postmaster-General a notice for withdrawal of the deposit and the Postmaster-General sends to the Registrar a warrant for the payment of the particular sum. Specimens of the above forms are hereinafter set out in paragraphs 11 and 12 hereof.

7. By Treasury Rules 54 and 55 it was the duty of the Registrar to give a personal supervision to the proper working of his department and to sign in his own handwriting all official communications to the Treasury and any certificate return or document referred to in such rules.

8. The Attorney-General informs the Court that at all material times hereinafter referred to the Registrar employed and paid one K. L. as Registrar's clerk to assist him in the discharge of his said duties and that this Information relates to certain frauds hereinafter mentioned committed by K. L. in respect of moneys paid into the X. County Court or into the Post Office Savings Bank at X. under section 70 of the County Courts Act 1888 and Order 38 of the Rules of 1889 made thereunder in certain matters hereinafter stated and that the said K. L. was enabled to commit the said frauds by reason of the Registrar neglecting his said duties and in particular that:—

He left the discharge of all such duties to his clerk K. L. without exercising any personal supervision or control over him.

He permitted K. L. to have the custody of the banker's pass book and cheque book relating to the County Court account also the custody of the Post Office Savings Bank deposit books thereby enabling him to surrender them to the Post Office. He also permitted K. L. to sign his the Registrar's name to orders receipts and returns in matters relating to the business of the said Court which said documents it was the duty of the Registrar himself to sign. He did not keep or cause to be kept pursuant to section 26 of the said Act a true account of all moneys paid into Court. He did not when Trustees paid money direct into Court for investment in the Post Office Savings Bank either invest the same or pay the same pursuant to Treasury Rule 6 as part of the moneys in his hands into the public account at the M. and N. Bank. He did not render pursuant to Treasury Rule 21 a true account of the moneys received and paid during the quarter.

9. All the entries in the Court cash book and ledger referred to in the six following cases are in the handwriting of K. L. and the several sums therein respectively mentioned were appropriated and applied by him to his own use and purposes.

10—49. [*Set out the details of the six cases and the alleged defaults of the Registrar and K. L.*]

50. The Defendants as executors of the Registrar have now or lately had in their possession custody power or control or in the possession custody power or control of their solicitors or agents books writings memoranda accounts and other documents which relate to the matters in question in this suit all which they ought to produce.

PRAYER.

The Attorney-General on behalf of His Majesty and the Plaintiff pray as follows:—

1. That it may be declared that an account be taken of all public moneys remaining unaccounted for by the Registrar on his death.
2. That it may be declared that the Defendants as his executors are liable to pay such moneys and interest thereon to the credit of the public account of the Plaintiff at the M. and N. Bank at X. or to the Treasury.
3. That the Defendants as such executors as aforesaid may make full discovery in the premises.
4. That the Attorney-General on behalf of His Majesty and the Plaintiff may respectively have such further or other relief as the case may require.

H. SUTTON.

R. B. FINLAY.

INTERROGATORIES.

Interrogatories for the Examination of the above-named Defendants in answer to the Information of His Majesty's Attorney-General.

1. Are you the executors of G. H. deceased? Did not the said G. H. die on 19 or on some other and what date? Was the said G. H. (hereinafter referred to as the Registrar) appointed Registrar of the County Court of Y. holden at X. in or about the year 18 and did he continue in that office until his death?

2. Was not the Plaintiff A. B. appointed Registrar of the said Court as and from 18 ?

3. Did not the Registrar between the month of 18 and the date of his death employ and pay one K. L. as Registrar's clerk to assist him in the discharge of his duties as set out in paragraphs 3 to 7 inclusive of the Information, or some and which of them?

4. Did not the Registrar leave the discharge of his said duties or some and which of them to his clerk K. L.? or did he exercise any personal supervision or control over him?

5. Did not the Registrar permit K. L. to have the custody of the banker's pass book and cheque book relating to the County Court account, and did he not also permit him to have the custody of the Post Office Savings Bank deposit books?

6. Did he not permit K. L. to sign his the Registrar's name to orders receipts and returns in matters relating to the business of the said Court?

7. Do you know the handwriting of the said K. L.? If yea, are the entries or some and which of them in the Court cash book and ledger respectively referred to in the 15th, 19th, 26th, 35th, and 44th paragraphs of the Information in his handwriting or in the handwriting of some other and what person? Is the entry in the Court plaint and minute book referred to in the 39th paragraph of the Information in the handwriting of K. L. or in the handwriting of some other and what person?

8. If in order to enable you to answer the preceding Interrogatory you require to see the Court cash book and ledger and the Court plaint and minute book the same will be shown to you at the office of the Plaintiff A. B. at the County Court at X.

9. Do you know the handwriting of the Registrar? If yea, are the signatures or some and which of them to the letters to the Treasury purporting to be signed by him respectively set out in paragraphs 11, 21, and 31 of the Information in his handwriting or in the handwriting of some other and what person?

10. Are the receipts or some and which of them respectively referred to in the 14th, 25th, and 34th paragraphs of the Information in the handwriting of the Registrar or in the handwriting of some other and what person?

11. Are the signatures or some and which of them to the accounts purporting to be signed by the Registrar referred to in paragraphs 16, 27, and 36 of the Information in his handwriting or in the handwriting of some other and what person?

12. If in order to enable you to answer the three preceding Interrogatories you require to see the documents therein respectively referred to the same will be shown to you at the office of the Treasury Solicitor, Law Courts Branch, 276, Royal Courts of Justice, Strand.

13. Have you not now, or have you not lately had in your possession custody power or control or in the possession custody power or control of your solicitors or agents books writings memoranda accounts vouchers and other documents which relate to the matters in question in this suit? Let the Defendants set forth a full true and particular list or schedule of all such books writings memoranda accounts and other documents as aforesaid distinguishing those now from those not now in their possession custody or power and let them set forth what has become of those which once were but are not now in their possession custody or power and when and to whom and why they parted with or destroyed the same.

The Defendants are required to answer all the foregoing Interrogatories.

HENRY SUTTON.

BOOK III.

Petition of Right.

CHAPTER I.

WHERE A PETITION OF RIGHT WILL LIE.

General Observations.

It is not proposed to discuss the early history of petition of right, for three reasons: (i) Such a discussion would scarcely be in place in a book which is intended as a guide to the existing practice, where the Crown or a Government Department is a litigant. (ii) The haze which encircles the early career of this form of proceeding renders it unsafe to estimate how far the history of petitions, which may or may not have been petitions of right, can be legitimately used to interpret, limit, or extend the operation of petition of right at the present day. (iii) The matter has been discussed at very great length in modern cases, and certain conclusions, right or wrong, have been drawn from the early authorities. Whatever we may think of these conclusions, they have been unchallenged for many years, and must be accepted now as the law; it would be an academic superfluity to quarrel with them.

A false impression seems to be prevalent that claims can be made by petition of right, which do not rest on a legal or equitable basis, but which are more in the nature of appeals to the mercy or good nature of the Sovereign. (See the remarks of Maule, J., in *Baron de Bode v. R.* (1848), as reported in 13 Q. B. 364, 387, n.; and the judgment in *Feather v. R.* (1865), 6 B. & S. 257; 35 L. J. Q. B. 200, below, p. 350.) As a matter of fact, the claims which can be made by petition of right are more limited in nature than those which can be made in proceedings between subject and subject. This will be clearly seen when we have discussed in detail the matters in respect of which a petition of right will and will not lie. Further, the fact that the fiat of the Sovereign has to be obtained renders it necessary

that the petition should show clearly on the face of it a claim of such a nature that the Crown's advisers can advise the Sovereign to allow it to proceed. Instances of the lodging of wild and reckless petitions are numerous. One has been known, which claimed moneys alleged to have been taken from the suppliant by a French Archbishop through a most picturesque conspiracy. Another has been presented in which the suppliant prayed a return of the fees which he had paid to one of His Majesty's Heralds, who had produced, as he alleged, a most fallacious pedigree of certain of his female relatives. In yet another petition the prayer was for the transference of a Chancery action, in which the suppliant had been unsuccessful, to Bow Street Police Court, and for leave to issue various summonses for perjury.

Apart from such absurd claims as these, petitions reasonable in themselves are sometimes presented, which cannot be allowed to proceed, as they do not rest upon any legal or equitable claim. Such, for instance, are appeals by the natural relatives of intestate bastards that the Crown should distribute the estate amongst them (*e.g.*, *Anson's Petition of Right*, not reported). Such appeals should be made, not by petition of right but by application to the Treasury Solicitor. In a proper case the estate will then be distributed among the relatives after deduction of the "Crown's share."

Petition of right is the process by which recovery is made from the Crown of property of any kind, including money, to which the suppliant is legally or equitably entitled, except in cases where this process is ousted by some statutory method of recovery. (See the definition of "relief" in sect. 16 of the Petitions of Right Act, 1860.)

In this general statement every species of petition of right, which is now regarded as admissible, is included. The principle must be stated as widely as this, or it will be impossible to bring under it such petitions as those for unliquidated damages for breach of contract. It is, in fact, stated nearly as widely in 3 Bla. Comm. 256, where it is said that petition of right "is of use where the King is in full possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the Crown." The earlier statement of Staundford, *Praerog.* 73 a, "Petition is all the remedie the subject hath when the King seiseth his land, or taketh away his goodes from him, having no title by order of his lawes so to do," is too limited in its terms. (Comyn, *Dig. Praerog.* D. 78, and Chitty, *Prerog.* 340 *seq.*, do not attempt a comprehensive definition.) The criticism which has just been made as to Staundford's definition, applies in a greater or less degree to more recent judicial definitions. In *Tobin v. R.* (1864), 16 C. B. (N. S.) 310,

357, 358; 33 L. J. C. P. 199, 207, the Court said: "The substance seems always to have been the trial of the right of the subject as against the right of the Crown to property, or an interest in property, which had been seized for the Crown; and, if the subject succeeded, the judgment only enabled him to recover possession of that specified property, or the value thereof if it had been converted to the King's use." In *Feather v. R.* (1865), 6 B. & S. 257, at p. 294; 35 L. J. Q. B. 200, 208, we find: "The only cases in which the petition of right is open to the subject are, where the land, or goods, or money of a subject have found their way into the possession of the Crown, and the purpose of the petition is to obtain restitution; or, if restitution cannot be given, compensation in money; or where the claim arises out of contract, as for goods supplied to the Crown, or to the public service. It is in such cases only that instances of petitions of right having been entertained are to be found in our books."

The former of these definitions is undoubtedly too narrow, the latter is nearly wide enough, but not quite satisfactory in form. It will be seen from the particular instances which follow that nothing less comprehensive than the definition already suggested will suffice.

Such is the ambit of petition of right. "The proceeding by petition of right exists only for the purpose of reconciling the dignity of the Crown and the rights of the subject, and to protect the latter against any injury arising from the acts of the former; but it is no part of its object to enlarge or alter those rights." (*Monckton v. A.-G.* (1850), 2 Mac. & G. 402, 412, per Lord Cottenham, L.C.)

Corporeal Hereditaments.

It is clear from the statements made above that a petition of right lies for the recovery of lands, but instances, outside the Year Books, have not been numerous. The Year Book decisions are collected in Bro. Abr. Peticion et Monstrans de Droit. *Monckton v. A.-G.* (1850), 2 Mac. & G. 402, see same case *s. n.* In *re Robson*, 2 Ph. 84; *Kelly v. R.*, not reported; and *Sheridan v. R.* (1893), not reported, were duly permitted petitions of right for the recovery of both the real and the personal estate of a deceased person (compare the precedent below, p. 416).

The Court in *Doe d. Legh v. Roe* (1841), 8 M. & W. 579; 11 L. J. Ex. 57, expressed the opinion that petition of right was the proper procedure for recovering land from the Crown. *Palk v. R.*, not reported, was an instance of a petition of right for that purpose, namely, the recovery of lands from the War Department. The Crown succeeded on demurrer, but the case was unfortunately not reported and the

author has been unable to ascertain the grounds of the decision. *Lautour v. A.-G.* (1865), 5 N. R. 102, 231, was a bill filed after a petition of right for a declaration that the suppliant was entitled to a grant from the Crown of land in Western Australia.

There has been discussion whether, in cases where office has been found as to lands in the hands of the Crown, the claimant can proceed by petition of right, or whether he is obliged to proceed by traverse of the office. In earlier times the question was of little importance because traverse, clumsy as it was and is, was a more convenient procedure than petition of right as it then was. At present, however, the subject would naturally wish to proceed by petition of right if possible. That he can do so is stated in Bro. Abr. Traverse de Office, &c. 18. "In case ou home poet traverse un office il poet suer per peticion, quod non negatur"; which is cited with approval in Manning, Exch. Pr. (ed. 2), p. 121 (x). See also Com. Dig. Praerog. D. 78, citing *Sadlers' Company's Case*, 4 Rep. 54 b, 55 a, and Y. B. P. 4 Hen. VII. pl. 6. And in fact proceedings by petition of right were taken in recent times for the recovery of land after office found in *Horner v. R.* (1885), not reported.

Generally as to the recovery of land from the Crown, see *Cawthorne v. Campbell* (1790), 1 Anst. 205, n., 215.

The rule laid down in *Bassel's Case* (1556), 1 Benl. & Dall. 46, that a petition of right must not include lands in several counties, because it was of the nature of a real action, has no application nowadays.

With regard to the recovery of the value of property disposed of or converted by the Crown, see below, p. 336.

By *Horsley's Petition of Right* it was sought to recover a mortgage debt secured on land in the Isle of Man which had fallen to the Crown. The fiat was granted. Compare Fitzh. Abr. Dett 17: "Si home soit dettor a moy et puis est utlage et devie et le roy seisi les bienz, le roy est tenus de rendre a mroy mon det si les biens sufficient."

Incorporeal Hereditaments.

Various ancient instances of the recovery of such hereditaments by petition of right will be found in Bro. Abr. Peticion et Monstrans de Droit, as of a rent-charge (see also Y. B. H. 21 Hen. VII. pl. 1, at fo. 2 b), and of an advowson, and for the discharge of a corody. See also Co. Ent., "Petition de Droit," for full accounts of these petitions, including petitions for an advowson and for dower. As to rent-charge, it is laid down in *Wicks and Dennis' Case* (1589), 1 Leon. 190, that rent is recoverable from the Crown only by petition of right, which stands in lieu of distress upon a subject, and that, as

demand must be made before distress on a subject, so it must be made before petition for rent to the Crown, and must be alleged to have been made in the petition.

It may be observed here that the Crown can take advantage of a condition of re-entry without demand (*Borough's Case* (1596), 4 Rep. 72 b; see also *Merton College, Oxford, Case* (1553), Dy. 87 b), except in respect of the Duchy of Lancaster—here it must make demand (*Bonny's Case* (1584), Moo. 149).

A seignory was recovered by petition in a case in Fitzh. Abr. Peticion, 19, referred to in Staundf. Praerog. 75 a.

As to gales in the Forest of Dean, which are licences to work coal, iron, or stone, conferring an interest in the nature of real estate (24 & 25 Vict. c. 40, s. 1), petitions of right were granted the fiat in *James v. R.* (1877), L. R. 17 Eq. 502; 5 Ch. D. 153; 43 L. J. Ch. 754; 46 L. J. Ch. 516, which sought the grant of a gale, in *In re Brain* (1874), L. R. 18 Eq. 389; 44 L. J. Ch. 103, for relief against the forfeiture of a gale, and in *Adams v. R.* and *Grindell v. R.*, not reported, which were similar to James' petition.

Tithes issuing out of Crown lands have been claimed by a petition of right, and the Crown's advisers were of opinion that such a petition of right would lie in a proper case, though in the particular instance the petition did not receive the fiat.

Chattels Real.

The doubt expressed in Bro. Abr. Peticion, 19, whether a petition of right would lie for anything less than a freehold, was thought by Lord Lyndhurst, L.C., in *Viscount Canterbury v. A.-G.* (1843), 1 Ph. 306, 325; 12 L. J. Ch. 281, not to be well founded.

In *Sir T. Cheller's Case*, Y. B. M. 9 Hen. IV. pl. 17, it was held that a tenant by statute merchant could recover by petition of right, see also the earlier case in 37 Ass. pl. 11. So with the recovery of a term, Y. B. T. 9 Hen. VI. pl. 15. In Y. B. P. 7 Hen. VII. pl. 1, at fo. 11 b, it is stated generally "de chatel real on aura petition de droit, auxy bien que per le franktenement."

In *In re Gosman* (1880), 15 Ch. D. 67; 49 L. J. Ch. 590, a petition of right was successfully brought by the next of kin of a testator to recover leasehold property which had been assigned to the Treasury Solicitor for the benefit of the Crown, and it was ordered that all the rents and profits should be handed over, together with interest thereon at 4 per cent. The decision was reversed as to the payment of interest (1881), 17 Ch. D. 771; 50 L. J. Ch. 624.

As to the liability of the Crown to hand over the mesne profits of

property which has been in its possession, see below, p. 443. It was not questioned in *In re Gosman*.

For a petition of right for the value of converted impure personalty, see below, p. 336.

Specific Chattels or (quaere) their Value.

As to these, Staundford, Praerog. 75 b, 76, observes: "As I said in the beginning, a man shal have his peticion for goods aswel as for lands, as where theschetor seiseth goods of one that is utlawed, and hath accompted for them in the exchequer, and after the utlagary is reversed, in this case the partie hath no remedy for his goods but only by petition. And this case you shal see in T. 34 H. 6, fo. 51. Howbeit Catesby and Hussey hold opinion to the contrary hereof, M. 1 H. 7 fo. 7 [read pl. 3, fo. 3 b]."

It must be observed that these contrary opinions seem to have been only dicta, and the same remark applies to an opinion expressed in Y. B. P. 13 Edw. IV. pl. 1. In the first case, however, to which Staundford refers, T. 34 Hen. VI. pl. 18, at fo. 51 a, the matter was argued, though apparently not necessary to the decision. Danby suggested that there might be a petition of right, but counsel denied this, saying that traverse was the right procedure. This was denied by the whole Court, who said that in several cases chattels could be recovered by petition of right, giving as an instance the former case mentioned by Staundford. It is not clear how far the Court intended to limit the rule by the words "in several cases," but it will be observed that the statement extends not only to chattels, but also to the proceeds of them which have come into the Exchequer. See the discussion of these cases in *Thomas v. R.* (1874), L. R. 10 Q. B. 31, 36; 44 L. J. Q. B. 9, 13.

The Court in *Tobin v. R.* (1864), 16 C. B. (N. S.) 310, 357, 358; 33 L. J. C. P. 199, seem to have been of the same opinion so far as the very earliest procedure corresponding to petition of right was concerned, saying: "the substance seems always to have been the trial of the right of the subject as against the right of the Crown to property or an interest in property, which had been seized for the Crown, and, if the subject succeeded, the judgment only enabled him to recover possession of that specified property, or the value thereof, if it had been converted to the King's use." In *Feather v. R.* (1865), 6 B. & S. 257, 294; 35 L. J. Q. B. 200, also, it is stated that a petition of right can seek restitution of land, goods, or money, or, if restitution cannot be given, compensation.

That a petition of right would lie for the recovery of specific chattels was taken for granted by the Crown and Court in *A.-G. v.*

Trustees of the British Museum, [1903] 2 Ch. 598, 603; 72 L. J. Ch. 743.

The question whether a suit for compensation or damages for conversion is not a suit in tort, and therefore not matter for a petition of right (see below, p. 350), seems never to have been formally considered, and may well provide matter for argument on a future occasion. The author inclines to the opinion that the remedy by petition of right should, in strictness, be limited to specific property, though such a limitation would no doubt involve hardship.

Fracis, Times & Co.'s Petition of Right, which prayed, among other things, the value of goods alleged to have been seized by Crown officers and converted to the use of the Crown, was refused the fiat, but not entirely on grounds material to the present discussion. *Wharton's Petition of Right* (1891), however, which was for the value of impure personalty converted by the Crown, seems to have received the fiat. *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 291; 74 L. J. K. B. 753, was a petition of right claiming certain gold or its value. The circumstances under which this petition received the fiat are dealt with below, p. 363. The point now in question did not, so far as the author knows, occur to the minds of the Crown's advisers. But in *Broadbent & Co. v. R.* (1900), not reported, where the claim was for the return of certain slates alleged to belong to the suppliants, and to have been seized by the Admiralty, or for their value, the Crown demurred, partly on the ground that the claim was in respect of a tort (see the form below, p. 405).

Money Claims in General.

These are far the most numerous and important subjects of petition of right in modern times, and their great variety will appear from the claims of this kind which are dealt with in the following pages.

There is no doubt whatever that a petition of right will lie in respect of money. A petition of right was suggested by the Court in the case of a pension in *Oldham v. Lords of the Treasury*, not reported, cited in 6 Sim. 220 (see also, as to an annuity, *The Bankers' Case* (1700), 14 St. Tr. 1); and again, in the case of a claim against the personal estate of a preceding sovereign in the hands of his successor, in *Ryces v. Duke of Wellington* (1846), 9 Beav. 579, 600, 601. The argument that it would not lie was definitely taken in *Baron de Bode's Case* (1845), 8 Q. B. 208, counsel for the Crown arguing, with the support of a mass of authority, which, however, mainly referred to petitions in Parliament, that a petition of right was maintainable for no other objects than land or specific chattels, certainly not for a sum of money claimed either as a debt or by way

of damages. The Court did not give a definite opinion in the matter, but plainly hinted that it was not prepared to dismiss the case on any such grounds (at pp. 271—274). So in *Feather v. R.* (1865), 6 B. & S. 257, 294; 35 L. J. Q. B. 200, the Court stated that a petition of right lies for money of a subject which has found its way into the possession of the Crown.

The author is unaware of any case in which the question has been argued in its simple form since that of Baron de Bode. No doubt money claimed as a debt and money claimed by way of damages do not stand quite on the same footing. As to the former, it is confidently submitted that no reasonable ground could be adduced for supposing that a petition of right would not lie in respect of it. The latter is dealt with under separate heads below. It matters not whether the money has been taken by the Crown directly, or whether it has come into the Crown's hands in some other way, so long as the petitioner can prove his title to it on the merits.

Claims in Contract.

Liquidated Sums due under Contracts.

These are clearly the subject of petition of right, and instances of petitions to recover such sums are very numerous in practice. Reports of them are rare, as they seldom present features of reportable interest.

Thames Iron Works and Ship Building Co., Ltd. v. R. (1869), 10 B. & S. 33, was a petition of right claiming remuneration for extra work done and materials provided by the suppliants in completing a vessel under a contract with the Admiralty. *Kirk v. R.* (1872), L. R. 14 Eq. 558, was a petition of right claiming, amongst other things, sums alleged to be due under a contract with the War Department. It would be useless to cite the numerous unreported cases of a similar kind, as there is no doubt about the principle. A petition of right will lie in such cases in respect of contracts made with any Department of the Crown, unless some other special remedy is provided by statute (see below, p. 349).

Among this class of petitions of right may be mentioned those claiming sums alleged to be due under charter-parties.

Yeoman v. R., [1904] 2 K. B. 429; 73 L. J. K. B. 904, was a claim by and on behalf of the owners of a steamship for demurrage under a charter-party entered into between the suppliant and the Admiralty. *Duncan's Petition of Right* is another instance of a petition for a sum alleged to be due under a charter-party entered into with the Admiralty. Another case was the *British and South*

American Steam Navigation Co., Ltd.'s Petition of Right (1905), which involved no less than 110 claims arising out of transport contracts made with the Admiralty and the War Office. It included claims for freight under actual and implied agreements, cost of re-fitting of ships, demurrage or damages for detention, and other matters connected with the contracts. *Weekes, Phillips & Co., Ltd.'s Petition of Right* (1904) was for dead freight under a contract of carriage made with the Admiralty. See the precedent printed below, p. 406.

Payment for Services rendered.

Subject to the exceptions discussed in the next chapter (p. 354), such payment may be claimed by petition of right. The majority of such claims hitherto have been by lawyers for services rendered to the Government. The Canadian case of *R. v. Doutre* (1884), 9 A. C. 745; 53 L. J. P. C. 84, was a petition by a member of the Quebec Bar, under the Canadian Petition of Right Act, 1876, on a *quantum meruit* in respect of professional services rendered by him to the Government, and he was held entitled to recover. The reasoning, however, would not apply to a member of the English Bar claiming in respect of services in the ordinary course of his professional duty. Claims by members of the English Bar, which have received the fiat, have been in respect of exceptional services under special retainers. Such have been *Macleod v. R.* and *Fisher v. R.*, by which claims were made for remuneration for drafting specimen digests under the direction of the Law Digest Commission; and recently, in 1907, *Snow v. R.*, claiming remuneration for revising the Rules of Court. The first two of these was referred to arbitration, and the last was settled at the trial before hearing.

Bushe v. R. (1869), *Times News.*, May 29, resulted in judgment for the suppliant. The claim there was in respect of the amount of salary due to him as master of the Court of Queen's Bench in Ireland, there having been various re-adjustments of offices and alterations of salary.

Davies' Petition of Right was for remuneration for alleged services to the political agent at Aden during the Abyssinian Expedition. The claim was compromised by the Crown.

Unliquidated Damages for Breach of Contract.

That a petition of right will lie for a breach of contract resulting in unliquidated damages was settled in *Thomas v. R.* (1874), L. R. 10 Q. B. 31; 44 L. J. Q. B. 9, and has never been seriously questioned since. It would be useless at the present day to discuss the decision, in view of the numerous cases in which it has been followed. It may

have been right or wrong—the author is inclined to think it was wrong—but if the decision had been to the contrary, clearly a remedy for such cases must have been made by legislation, as it would be outrageous that the subject should have no means of redress where there had been a breach of contract by the Crown or a Government Department. The ancient authorities were discussed in that case. It may be observed here that, before that case, *In re von Frantzius* (1858), 2 De G. & J. 126; 27 L. J. Ch. 368, presents an instance of a petition of right for unliquidated damages for breach of contract on the part of the Admiralty, to which no objection on that score was taken by the Crown; and that in *Feather v. R.* (1865), 6 B. & S. 257, 294; 35 L. J. Q. B. 200, the Court said that a petition of right lay “where the claim arises out of a contract, as for goods supplied to the Crown or to the public service,” without any limitation as to the nature of the claim. *Scott v. R.* (1861), 2 F. & F. 634, was another modern instance, before the decision in *Thomas v. R.*, in which a petition of right was brought, without demurrer, against the Crown for unliquidated damages, in this case also for breach of an alleged contract with the Admiralty. Curiously enough, this case seems not to have been noticed in *Thomas v. R.* Neither was *Kirk v. R.* (1872), L. R. 14 Eq. 558, which was in part a petition of right for unliquidated damages in respect of an alleged breach of contract by the War Department. *Thomas v. R.* was followed in *Windsor and Annapolis Rail. Co. v. R.* (1886), 11 A. C. 607; 55 L. J. P. C. 41, a case under the Canadian Petition of Right Act, 1876. The Board said: “It must now be regarded as settled law that, whenever a valid contract has been made between the Crown and a subject, a petition of right will lie for damages resulting from a breach of that contract by the Crown.” It also rejected the argument that the Crown is only liable in respect of breaches of contract occasioned by the omissions of Crown officials, and is not liable in respect of breaches due to their positive acts, even when those acts are done under direct authority from the Crown.

Churchward v. R. (1865), L. R. 1 Q. B. 173, was a petition of right for damages for breach of a contract for the carriage of mails made between the suppliant and the Admiralty. It was held that in the agreement there was only a covenant by the Admiralty on behalf of the Crown that, in consideration of the provision of mail vessels by the suppliant, they would pay him, if Parliament provided the funds, and that there was no implied covenant by them to employ him; and therefore a petition of right for damages for refusing to employ him could not be maintained.

Eyre and Spottiswoode v. R. (1887), 3 T. L. R. 5, 304, 447, was a

petition of right for damages for the alleged wrongful withdrawal from them of printing, in respect of which they had made a contract with the Stationery Office. Judgment was given for the Crown on the preliminary point that the Controller had a discretion as to what, if anything, the printers should be asked to print under the contract, and that was held to conclude the whole matter. See below, p. 401.

In *Secretary of State for War v. Easdale* (1893), 27 I. L. T. R. 70, it was pointed out that a petition of right was the proper method of claiming damages for a breach by the Secretary of State of a contract to repair certain premises demised to him, and that it could not be done by counterclaim in an action brought by the Secretary of State.

Stewards & Co., Ltd. v. R. (1901), 16 T. L. R. 153; 17 T. L. R. 111 (C. A.); *s. n. A.-G. v. Stewards & Co., Ltd.*, 18 T. L. R. 131 (H. L.), was a petition of right claiming damages for breach of a contract made between the suppliant and the Admiralty to take stone for a breakwater at Portland.

Claims arising Abroad.

It seems to have been thought that the same rule applies to these as to those claims to land situated abroad, in respect of which a petition of right will not lie in England or Ireland (see below, p. 360). It is submitted that there is no analogy between the two cases. If the sum claimed is chargeable on the Imperial revenues, there seems to be no reason why a petition of right should not be presented to the Crown here in respect thereof. That seems to be the only criterion. If the sum were not chargeable on the Imperial revenue, there could be no satisfaction of judgment under sect. 14 of the Petitions of Right Act, 1860. Whether in such a case the Crown can, or should, as a matter of convenience, grant its fiat for trial in the *locus contractus* is discussed below, p. 381. Where the sum claimed is only chargeable on local revenue, *e.g.*, of India, as in *Frith v. R.* (1872), L. R. 7 Ex. 365; 41 L. J. Ex. 171 (compare *Doss v. Secretary of State for India in Council* (1875), L. R. 19 Eq. 509, 535), proceedings can only be taken against the Crown or Government locally, and if there is no local provision for such proceedings, then the claimant will be without remedy. *Dickson v. R.* (1865), 11 H. L. C. 175 (see below, p. 343), was an Irish case, but the sum claimed had been paid into the Imperial Exchequer, and consequently there seems to have been no reason why the petition of right should have not been lodged in England. It is not clear that Erle, C.J., in the report in 11 W. R. 918, at p. 921, was referring to any objection of this kind. The same observation applies to *Bushe v. R.* (see above, p. 338). The

Petitions of Right (Ireland) Act, 1873, appears not to affect the position. In *Ryland v. R.* (1883), Times News., Dec. 18, the point of jurisdiction was raised but not decided. The suppliant was claiming for certain emoluments of offices held by him under the Canadian Government. It seems that he entered the Government service in 1818, long before any part of Canada became a self-governing colony, and the facts are not sufficiently clearly stated to enable one to judge whether there was anything in the objection to the jurisdiction.

Mixed Contract and Tort.

Where the claim under a petition of right is based on mixed contract and tort, or is such that it may be based on either, the Crown will probably grant the fiat, in order that it may be decided whether the claim is really in contract, when the Crown will be liable, or in tort, when the Crown will not be liable (see below, p. 350), or whether it is severable.

A very interesting instance of this nature was *Harris' Petition of Right* (1903), which received the fiat, but never came to trial. The suppliant bought at an auction from the Admiralty, under the head of "old iron and steel," a lot described as "nine old iron chemical bottles in wood boxes," at the price of 35s. He resold it as "dock-yard scrap for smelting purposes." The bottles were in fact charged with ammonia gas at a pressure of 140 pounds to the square inch. On the placing of one of these bottles, together with a quantity of old iron, in a smelting furnace of the sub-purchasers, something naturally occurred, and the suppliant had to pay 484*l.* damages. The petition of right was framed as for a breach of warranty. The circumstances pointed to a breach of duty in and about the sale of the lot on the part of the Admiralty, and perhaps a breach of warranty. The claim undoubtedly savoured of tort, but it would seem from the authorities that it might perhaps be laid in contract also. Thus, in *Clarke v. Army and Navy Co-operative Society, Ltd.*, [1903] 1 K. B. 155; 72 L. J. K. B. 153, a very similar case, the Court found that there had been a breach of duty, but did not exclude the possibility of there being a breach of warranty; and in *Brown v. Boorman* (1844), 11 Cl. & F. 1, 44, Lord Campbell said: "Wherever there is a contract, and something to be done in the course of the employment which is the subject of that contract, if there is a breach of a duty in the course of that employment, the plaintiff may either recover in tort or in contract."

Harris' petition, as has been stated, received the fiat, and the Crown would probably again grant the fiat in a similar case.

Johnson's Petition of Right, which received the fiat and was compromised by the Crown, seems to have belonged to the same class. It was a claim by a War Department tenant for various injuries alleged to have been suffered by him at the hands of the War Office.

The claim in *Windsor and Annapolis Rail. Co. v. R.* (1886), 11 A. C. 607; 55 L. J. P. C. 41, already referred to on p. 339, though laid in contract, also savoured of tort. It was based upon a sort of trespass by officials of the Government in ejecting the suppliants from a railway over which the Crown had contracted to give them entire control. Compare also the Canadian case, *Robertson v. R.* (1882), 6 S. C. R. 52.

The claim in *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391; 74 L. J. K. B. 753, partook at least as much of tort as of contract.

In *Broadbent & Co. v. R.* (1900), not reported, the claim being in respect of the seizure by the Admiralty of certain slates alleged to belong to the suppliants, the fiat was granted, but the Crown demurred on two grounds, one of which was that the seizure complained of was a tort. See the precedents below, pp. 403, 405.

Personal Estate of Deceased Intestates.

The fiat has been granted to numerous petitions of right lodged by claimants to personal estate in the hands of the Crown's nominee, or otherwise in the possession of the Crown, owing to the death of the possessor without known kin. Such petitions are generally assigned to the Chancery Division. We may instance the petitions of right of *Kelly* (1900), *Sheridan* (1893), *Axford*, *Mullett*, *Tait*, *Colledge* (1898), and *Palmer*, none of them reported; *Monckton v. A.-G.* (1850), 2 Mac. & G. 402; *s. n. In re Robson* (1846), 2 Ph. 84; and *In re Brooke's Settlement*, not reported, cited in 5 N. R. at p. 103.

An ordinary inquiry as to next of kin is ordered and judgment follows accordingly. Sometimes, as in *Tait's* case, the Crown has obtained an extension of the time for putting in an answer, and, after making inquiries, has admitted the claim.

By the Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71), s. 3 (p. 735), "After the passing of this Act an information or other proceeding on the part of Her Majesty shall not be filed or instituted, and a petition of right shall not be presented in respect of the personal estate of any deceased person, or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought by or against a subject."

Duties Paid.*Probate, Legacy, and Succession Duty.*

See *Percival v. R.* (1864), 3 H. & C. 217; 33 L. J. Ex. 289; *Stern v. R.*, [1896] 1 Q. B. 211; 65 L. J. Q. B. 240; *De Lancey v. R.* (1872), L. R. 7 Ex. 140; 41 L. J. Ex. 64; *Perry's Executors v. R.* (1868), L. R. 4 Ex. 27; *s. n. Bacon v. R.*, 38 L. J. Ex. 5; *Crossman v. R.* (1886), 18 Q. B. D. 256; 56 L. J. Q. B. 241. In *In re Nathan* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 229, the Court expressed the opinion that a petition of right was the proper procedure to obtain the repayment of probate duty, and the Attorney-General went so far as to undertake, not merely that he would advise that the fiat should be granted, but that the fiat would be granted. These remarks will apply also to the duty on the property of bodies corporate and unincorporate.

Estate Duty.

The Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10 (1) (p. 744), provides for an appeal to the High Court by any person aggrieved by the decision of the Inland Revenue Commissioners with respect to the repayment of any excess of duty paid, and on the decision of the Court that the duty ought to be less than that paid to the Commissioners, the excess is to be repaid. In cases which do not fall within this section, or to which this section is for any reason inapplicable, as, for instance, if the time therein limited has elapsed, a petition of right will lie for the return of estate duty. Sect. 8 of the Act, it is to be observed, provides that the existing law and practice relating to death duties is to apply, so far as they are applicable and subject to the provisions of the Act, to the collection, recovery, and repayment of estate duty. *Miles' Petition of Right*, not reported, and *Winans v. R.* (1907), 23 T. L. R. 705, are instances of petitions under this head.

Excise and Customs Duties.

Carron Co. Ltd.'s Petition of Right (1902) claimed the repayment of customs duty alleged to have been wrongly exacted.

Dickson v. R. (1865), 11 H. L. C. 175, was a petition of right to obtain the return of a sum alleged to have been overpaid in respect of a grocer's excise licence. *Richard's Petition of Right* (1901) concerned a similar subject-matter, but the fiat was refused on the facts as disclosed in the petition.

In *Malkin v. R.*, [1906] 2 K. B. 886; 75 L. J. K. B. 884, the suppliant sought the return of a contribution to the compensation

fund under the Licensing Act, 1904 (4 Edw. VII. c. 23), s. 3, which the Commissioners of Inland Revenue had compelled him to pay in respect of a provisionally renewed on-licence.

Light Dues and other Sums paid under the Merchant Shipping Acts.

Peninsular & Oriental Steam Navigation Co. v. R., [1901] 2 K. B. 686; 70 L. J. K. B. 845, was a petition of right claiming the return of light dues alleged to have been overpaid owing to the refusal of the officials to deduct the crew space occupied by lascars, on the ground that it ought to have been spacious enough to comply with the Merchant Shipping Act, 1894, but did not do so. Judgment was given against the suppliants. The pleadings are printed below, p. 408.

In this case the Crown was willing to grant its fiat to the petition, but it is not altogether clear that the General Lighthouse Fund is such a Crown fund, or "King's treasure," as to make moneys paid into it the subject of petition of right. The Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), s. 1, separated the General Lighthouse Fund from the Mercantile Marine Fund, and directed that such moneys as were not thereby made payable to the General Lighthouse Fund, and which had until then been payable to the Mercantile Marine Fund, should in future be paid into the Exchequer. No definite conclusion can be drawn from this provision as to whether the Mercantile Marine Fund, or the General Lighthouse Fund, was or is to be regarded as a Crown fund. The following sections, however, of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), seem to bear upon the matter:—By sect. 648 (3), light dues are to be paid by the general lighthouse authorities to His Majesty's Paymaster-General; the same is the case with colonial light dues (sect. 672). By sect. 678 (now repealed) Parliament subsidised the Mercantile Marine Fund. By sect. 679 (1), as amended by the Act of 1898, s. 1 (c), accounts of the General Lighthouse Fund are to be deemed to be public accounts within the meaning of the Exchequer and Audit Departments Act, 1866 (29 & 30 Vict. c. 39), s. 33, and by sect. 679 (2), they are to be laid before Parliament every year by the Board of Trade. The sums paid into the fund are those mentioned in sect. 676 (1) (i), and the expenses paid thereout are specified in sects. 531 (2), 677 (i). The expenses are to be fixed and approved by the Crown by Order in Council and by the Board of Trade, under sect. 659 and sect. 660 respectively.

It is not altogether easy to determine from these provisions, whether moneys in the General Lighthouse Fund can be the subject of petition of right or not; the author inclines to the view that they

are not. It seems clear, however, that the other sums paid under the Merchant Shipping Acts, and now paid into the Exchequer by virtue of sect. 1 of the Act of 1898, are the proper subject of petition of right.

Stamp Duty.

Brown's Petition of Right (1903) was a petition of right for the return of stamp duty, presented by a stockbroker.

Land Tax.

The author is not acquainted with any instance of a petition of right for the return of land tax, but it would seem, on general principles, that such a petition would lie; and he is unaware of any provision in the numerous Acts relating to land tax which would prevent it.

Tolls.

Northam Bridge Co. v. R. (1887), 55 L. T. 759, was a petition of right claiming a declaration that persons in the service of the Post Office were liable to pay tolls in like manner as other persons, an account and payment. The petition was dismissed on demurrer.

Tomline v. R. (1879), 4 Ex. D. 252; 48 L. J. Ex. 453, was a petition of right claiming certain tolls on goods carried over the suppliant's jetty under an agreement between the suppliant and the Crown.

Rent and Mesne Profits.

Ryan's Petition of Right was for arrears of rent of a house vested in and occupied by the War Department. The Crown paid the amount claimed and costs. In the action of *Ryan v. Earl de Grey and Ripon* (1865), 11 Ir. Jur. (N. S.) 236, an attempt had been made to sue the Secretary of State for War for the rent, and the action had been dismissed on the ground that a petition of right was the proper remedy. See also, as to mesne profits, below, p. 443.

Compensation for Land taken.

Blundell v. R., [1905] 1 K. B. 516; 74 L. J. K. B. 91, was a petition of right lodged by a person, whose lands had been compulsorily taken under the Defence Acts. An award had been made in two parts, one of compensation for the value of the land, the other of compensation for injurious affection. The Crown argued that no sum was payable under the latter head, where land was taken under the Defence Acts. Judgment was given for the suppliant.

Incorporated Society for Promoting Protestant Schools in Ireland v. R., [1900] 1 I. R. 464, was a petition of right in respect of lands

taken under still more ancient Defence Acts of 1803 and 1804, claiming that the Crown should continue to pay rent, or remove the buildings erected by it on the lands, or pay compensation for the damage done; or, in the alternative, that the War Department were bound, as an ordinary tenant would be, to restore the lands to their original condition on the termination of the tenancy. Reluctant judgment for the Crown.

Baring's Petition of Right may be mentioned here. It claimed damages for breach of covenant in the erection of works under the Defence Act, 1860, and was compromised by the Crown by the purchase of the property in respect of which the covenant was given.

Pensions.

The question of petitions of right by military and civil servants of the Crown after dismissal, are dealt with in the next chapter (p. 354), where it is pointed out that they hold office at the Crown's pleasure only, and have in general no claim to compensation for dismissal, or to the payment of pensions. But apart from such exceptions, a petition of right would no doubt lie for the recovery of a pension or arrears of a pension, and even in the case of a civil servant, where the servant was entitled by statute or otherwise. The remedy is suggested in *Oldham v. Lords of the Treasury*, cited 6 Sim. 220. In *Murray's Petition of Right*, arrears of pension were claimed. The petition received the fiat, and was settled by the Crown on payment of six years' arrears and future payment of the pension.

Owens v. R., [1900] 2 I. R. 513, was a petition of right lodged by a teacher claiming a pension of a certain amount under the National School Teachers (Ireland) Act, 1879 (42 & 43 Vict. c. 74), on the ground that there was a contract between the Treasury and himself, that subsequent rules made by the Lord Lieutenant with the approval of the Treasury could not vary such contract, and that such rules were *ultra vires*. Whether the form of this petition was such that it ought to have received the fiat seems to be dubious. The suppliant, it appears, was not at the time in receipt of a pension, and merely sought a declaration that he would become entitled to a pension of a certain amount by the deduction of certain premiums from his salary, whereas the Treasury claimed to make a larger deduction.

Money taken in Execution by the Crown.

For an instance of a petition of right by bankers claiming money and other property extended by the Crown to answer a debt to the

Crown of certain of the bank's customers, see *In re English Joint Stock Bank*, [1866] W. N. 199.

Claims under various Statutes.

Under the Telegraph Acts we find *Great Western Rail. v. R.* (1889), 4 T. L. R. 383 (C. A.); *s. n. Postmaster-General v. Great Western Rail.*, 5 T. L. R. 714 (H. L.), where a petition of right prayed a declaration as to the construction and effect of an agreement made between the Postmaster-General and the suppliants. The matter at issue was the amount to be paid by each of them towards the cost of shifting certain telegraph poles and wires. We also find *St. James and Pall Mall Electric Light Co. Ltd. v. R.*, [1904] W. N. 68; 73 L. J. K. B. 518, a claim for compensation under sect. 7 of the Telegraph Act, 1863, for damage done by the Postmaster-General. See further as to these cases above, p. 56.

Clogher Valley Tramway Co. v. R. (1892), 30 L. R. Ir. 316, was a petition of right claiming a sum for the conveyance of parcels awarded to the suppliants by a referee under their special Act. The Postmaster-General alleged that the tramway was a railway within the Post Office (Parcels) Act, 1882, and that the suppliants were only entitled to the remuneration fixed thereby. The material portions of the pleadings will be found in the report.

Kelly v. R., [1899] 2 I. R. 360, was a petition of right praying the repayment of a certain sum by the Treasury to the treasurer of the county in ease of the ratepayers, from whom a dividend had been levied under the Tramways (Ireland) Act, 1883 (46 & 47 Vict. c. 43), s. 6.

Prize and Cognate Matters.

By the Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 52, "A petition of right, under the Petitions of Right Act, 1860, may, if the suppliant thinks fit, be intituled in the" Probate, Divorce and Admiralty Division of the High Court of Justice, "in case the subject-matter of the petition or any material part thereof arises out of the exercise of any belligerent right on behalf of the Crown, or would be cognizable in a Prize Court within Her Majesty's dominions if the same were a matter in dispute between private persons.

"Any petition of right under the last-mentioned Act, whether intituled in the" Probate, Divorce and Admiralty Division of the High Court of Justice "or not, may be prosecuted in that" Division, "if the Lord Chancellor thinks fit so to direct.

"The provisions of this Act relative to appeal, and to the framing and approval of General Orders for regulating the procedure and

practice of the " Court, " shall extend to the case of any such petition of right intituled or directed to be prosecuted in that " Division; " and, subject thereto, all the provisions of the Petitions of Right Act, 1860, shall apply, *mutatis mutandis*, in the case of any such petition of right; and for the purpose of the present section the terms ' Court ' and ' Judge ' in that Act shall respectively be understood to include and to mean the " Probate, Divorce and Admiralty Division of the High Court of Justice and a judge thereof, " and other terms shall have the respective meanings given to them in that Act."

For the practice in prize proceedings, see below, p. 514.

Colonial Stock and Dividends.

By the Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 20, " Any person claiming to be interested in colonial stock to which this Act applies [see sect. 1], or in any dividend thereon, may present a petition of right in England in relation to such stock or dividend, and the like proceedings may be had upon such petition as in the case of any other petition of right, subject to this qualification, that the certificate of the judgment, decree, rule or order of the Court may be left with the registrar instead of with the Commissioners of Her Majesty's Treasury, and such judgment, decree, rule, or order shall be complied with by the registrar or other agent of the colonial Government having possession in England of moneys of such Government instead of by the Commissioners of Her Majesty's Treasury."

CHAPTER II.

WHERE A PETITION OF RIGHT WILL NOT LIE.

Where another Statutory Remedy is provided.

IN Book I. various statutory provisions will be found which create the right to sue certain Government Departments by action or other proceeding. In such cases, it would seem, the right to proceed against the Crown by petition of right is taken away, although, in the converse case, the Crown may still proceed by prerogative process. In certain cases, however, as in that of the Secretary of State for War, the Crown has been of opinion, probably erroneously, in the author's view, that the power of the plaintiff to sue the head of the Department in question is not absolute, but is dependent on the willingness of the official to be sued. (See above, pp. 32, 39.) If the Crown were to take objection to such a suit on this ground, and the plaintiff then proceeded by petition of right, the Crown could scarcely refuse the fiat.

In *Frith v. R.* (1872), L. R. 7 Ex. 365 ; 41 L. J. Ex. 171, it was pointed out that the suppliant's remedy was not by petition of right, but by statutory action against the Secretary of State in Council of India. (See above, p. 25.) The same principle will apply where any special statutory means is provided for recovering moneys or property from the Crown, *e.g.*, under the National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 55. (See above, p. 75.) See also the income tax cases, below, p. 354.

In *De Bode v. R.* (1851), 3 H. L. C. 449, it was held that the suppliant was confined to his remedy under a statute which provided for an application to commissioners thereby appointed for the settlement of claims similar to those of the suppliant.

Where there is no Claim in Law or Equity.

This matter has already been dealt with generally in the first chapter of this Book (p. 330).

Claims in Tort.

The question whether a petition of right would lie for damages in respect of a tort was first argued in *Viscount Canterbury v. A.-G.* (1843), 1 Ph. 305. In that case the suppliant claimed damages for injury to property suffered by him, while Speaker of the House of Commons, owing to the burning of the Houses of Parliament. The fire was alleged to be due to the negligence of certain servants of the Crown employed by the Commissioners of Woods and Forests. Lord Lyndhurst, L.C., pointed out that the Sovereign could not be held liable for personal negligence, and that, therefore, the principle by which a master is held liable for the negligence of his servants could not apply to the Sovereign. He further refused to hold that a petition of right could lie in respect of such a matter or to regard the only early authorities produced, namely, *Gerveis de Clifton's Case*, Y. B. P. 22 Edw. III. pl. 12, and *Robert de Clifton's Case*, 18 Edw. II., 1 Rot. Parl. 416, as instances to the contrary.

The matter was next discussed in *Tobin v. R.* (1864), 16 C. B. (N. S.) 310; 33 L. J. C. P. 199, which was a petition of right for damages for the alleged wrongful destruction of the suppliant's ship by the commander of a Queen's ship employed in the suppression of the slave trade. It was held that a petition of right would not lie to recover compensation for a wrongful act done by a servant of the Crown in the supposed performance of his duty, nor in any case for unliquidated damages for a trespass. The remedy must be against the person who actually committed the wrongful act. Every available early authority was discussed.

In the next case, *Feather v. R.* (1865), 6 B. & S. 257; 35 L. J. Q. B. 200, a petition of right for damages for the alleged unauthorised use of the suppliant's patent by the Crown, the case was decided against the suppliant on another point; but the Court was invited to express an opinion on the question here under discussion, and which had been argued most elaborately, and did so. They saw no reason for dissenting from the conclusion arrived at in *Tobin v. R.*, *ubi sup.* They agreed with the Court in that case in regarding *Conrad of Colon's Case*, 4 Edw. I., Mem. Scacc. (ed. Maynard), fo. 5, which had been disinterred since *Viscount Canterbury v. A.-G.*, *ubi sup.*, as being a proceeding for the restitution of a specific chattel, and added, "Not only is there no precedent for a petition of right being entertained in respect of a wrong in the legal sense of the term, but, if the matter is considered with reference to principle, it becomes apparent that the proceeding by petition of right cannot be resorted to by the subject in the case of a tort. For it must be borne in mind that the petition of right, unlike a petition addressed to the

grace and favour of the Sovereign, is founded on the violation of some right in respect of which, but for the immunity from all process with which the law surrounds the person of the Sovereign, a suit at law or equity could be maintained. The petition must therefore show on the face of it some ground of complaint which, but for the inability of the subject to sue the Sovereign, might be made the subject of a judicial proceeding. Now, apart altogether from the question of procedure, a petition of right in respect of a wrong, in the legal sense of the term, shows no right to legal redress against the Sovereign. For the maxim that the King can do no wrong applies to personal as well as to political wrongs, and not only to wrongs done personally by the Sovereign, if such a thing can be supposed to be possible, but to injuries done to a subject by the authority of the Sovereign. For, from the maxim that the King cannot do wrong, it follows, as a necessary consequence, that the King cannot authorise wrong. For to authorise a wrong to be done is to do a wrong, inasmuch as the wrongful act, when done, becomes, in law, the act of him who directed or authorised it to be done. It follows that a petition of right which complains of a tortious act done by the Crown, or by a public servant by the authority of the Crown, discloses no matter of complaint which can entitle the petitioner to redress. As in the eye of the law no such wrong can be done, so, in law, no right to redress can arise; and the petition, therefore, which rests on such a foundation falls at once to the ground." The Court then proceeds to point out that the proper remedy is by action against the officer or servant who actually committed the tortious act, and that such a person cannot plead in defence the authority of the Crown. Good specimens of such actions will be found in the Admiralty cases cited hereafter at p. 525, and in the cases discussed in Book VII. of this work. They will, in most instances, have the same effect as a petition of right for damages for the tort, since, in a proper case, the Crown will defend its officer and become responsible for any damages awarded.

The above comprehensive statement of the law has been universally accepted, and has not since been questioned, so far as the author knows.

In the case of *Regent's Canal Co.'s Petition of Right*, which was for damages done to the suppliant's property by a landslip on the land of the Crown, the petition was discontinued on payment of taxed costs, apparently on its being pointed out by the Crown that a petition of right would not lie in respect of such a claim. See also *Smith v. L. A.* (1897), 25 R. 112, where it was held that the War Department was not liable for any wrongful acts or illegal proceedings of a court martial.

So in *Wilson v. 1st Edinburgh City Royal Garrison Artillery*

Volunteers (1904), 7 F. 168, it was said that, though the commanding officer of a regiment of volunteers might be sued for damages as an individual, he could not be sued as representing the regiment and controlling its funds, because those funds belonged to the Crown, and the Crown could not be liable or sued for damages in respect of the wrongful acts of its officers.

Petitions of right based on mixed contract and tort are dealt with above, p. 341.

In places, however, where there is a statutory provision as to proceedings against the Crown or Government wide enough to cover claims based upon tort, such proceedings will be competent in spite of the general principle of English law which has just been considered. This is the case, for instance, in New Zealand (*R. v. Williams* (1884), 9 A. C. 418; 53 L. J. P. C. 64), in New South Wales (*Farnell v. Bowman* (1887), 12 A. C. 643; 56 L. J. P. C. 72), and in the Straits Settlements (*A.-G. of the Straits Settlements v. Wemyss* (1888), 13 A. C. 192; 57 L. J. P. C. 62). The dictum in *Hettihewage Siman Appu v. Queen's Advocate* (1884), 9 A. C. 571, 586; 53 L. J. P. C. 72, which appears to be to the contrary effect, must, as *Farnell v. Bowman* pointed out, be taken to refer only to the law of Ceylon.

Claims for Infringement of Patents.

This is a particular case of tort which merits separate treatment. In the earliest case, *In re Pering* (1837), 2 M. & W. 873; 6 L. J. Ex. 253, the matter was not discussed on the merits, but it was decided in *Feather v. R.* (1865), 6 B. & S. 257; 35 L. J. Q. B. 200, that a petition of right would not lie in respect thereof. The Admiralty, it was alleged, had infringed a patent of the suppliant's by constructing and using a certain ship for the service of the Crown. The Court was of opinion that letters patent in the usual form did not preclude the Crown from the use of the invention protected by the patent, even without the assent of, or compensation to, the patentee. This is no longer the case, owing to sect. 29 of the Patents and Designs Act, 1907 (7 Edw. VII. c. 29), which provides that "a patent shall have to all intents the like effect as against His Majesty the King as it has against a subject"; and provision is made for the user of the invention for the service of the Crown, on terms to be agreed upon with the approval of the Treasury; or, in default of agreement, to be settled by the Treasury after hearing all parties interested. As to proceedings under this section, see below, p. 539. But before the passing of the Act of 1883 which was superseded by the Act of 1907, it was held in *Dixon v. London Small Arms Co.* (1876), 1 A. C. 632;

46 L. J. Q. B. 617, in an action between subject and subject for the infringement of a patent, that the defendants, who were private contractors with the Government, and not officers or servants of the Crown, could not rely on the principle of *Feather v. R.* as a protection. In consequence of that decision, in *In re Napier's Patent* (1881), 6 A. C. 174; 50 L. J. P. C. 40, on the prolongation of a patent a clause was inserted, at the request of the Crown, that the Government and its contractors should be entitled to use the invention.

The provisions of the Act of 1907 do not, however, it is apprehended, affect that part of the judgment in *Feather v. R.*, *ubi sup.*, which decides that a petition of right will not lie against the Crown for an infringement of a patent. They merely have the effect that, in an action by the patentee against the officer or officers of the Crown who were actually guilty of the infringement, such officer or officers could no longer plead one of the defences which was raised in *Feather v. R.*, viz., that the Crown was entitled to use any patented invention without the consent of, or compensation to, the patentee. There is a record of one other case of petition of right for alleged infringement of patent before the passing of the Act of 1883 (now superseded by the Act of 1907), namely, *Clare's Petition of Right*. This seems to have received the fiat and to have gone for trial, where a verdict was returned for the Crown. The author is unaware why the petition was permitted to proceed and to be argued on its merits. Such a course was inconsistent with the practice followed by the Crown in recent years.

Nobel's Explosives Co., Ltd. v. Anderson (1895), and *Maxim-Nordenfelt Guns and Ammunition Co., Ltd. v. Anderson* (1898), were both in substance actions against the Crown for damages for an alleged infringement of patent. In both cases, as it is expressed in each instance in the respondent's printed case in the House of Lords, "the Government disputed the claim, and it was agreed that the issues involved between the appellants and the Government should be raised and determined in an action, in which the respondent (the Director-General of Ordnance Factories) should be made defendant as the representative of the Government, the Government agreeing that, if the result of the action should be in the appellant's favour, the Crown would be bound by it, and would admit the right of the appellants to have the terms of user by the Crown, failing agreement, settled under sect. 27 of the Patents, Designs and Trade Marks Act, 1883."

The procedure thus adopted is based on the decision in *Feather v. R.* with regard to petition of right, to which reference has already been made. Similarly, in the case of *Eichbaum's Petition of Right*, where a claim of a similar nature was made, the Crown refused the fiat.

Recovery of Income Tax.

In *Holborn Viaduct Land Co., Ltd. v. R.* (1888), 52 J. P. 341, the suppliant company sought to recover by petition of right income tax under Schedule D. alleged to have been overpaid by them. On the pleadings, which will be found in full in the report, the Crown objected that the only remedy of the suppliants was by way of appeal against the assessments during the time and in the manner provided by the statute in that behalf. Stephen, J., in the first place, held that the claim could not extend beyond the three years limited by the Income Tax Act, 1860, s. 10, and, in the second place, assented generally to the Crown's proposition.

In *Hunter v. R.*, [1903] 1 K. B. 514; 72 L. J. K. B. 230, where the question arose what amount of premium on a policy of life insurance the suppliant was entitled to deduct from his assessment to income tax, the Attorney-General stated that the view of the Crown was that the suppliant's proper remedy was not by petition of right, but by a case stated by the Income Tax Commissioners. He, however, waived the objection under the circumstances.

Claims by Military, Naval and Civil Officers of the Crown in respect of Pay, Pension and Damages for Loss of Office.

General Observations.

"It is clearly agreed that the King hath an interest in all his subjects, and is entitled to their services, and may employ them in such offices as the public good and the nature of our constitution require." (Bac. Abr. Prerog. (C.), p. 420.)

"The word 'officium' principally implies a Duty and in the next place the charge of such Duty, and 'tis a Rule that where one man hath to do with another man's affairs against his will and without his leave, that is an office, and he who is in it is an officer. . . . Officers are distinguished into Civil and Military, according to the nature of their several Trusts; and every man is a publick officer who hath any duty concerning the Publick; and he is not the less a publick officer where his authority is confined to narrow limits, because 'tis the Duty of his Office and the Nature of that Duty which makes him a publick Officer and not the Extent of his Authority." (*R. v. Burnell* (1699), Carth. 478, argument.)

"If offices, either in the grant of the King or a subject, which concern the administration, proceeding or execution of justice, or the King's revenue, or the commonwealth, or the interest, benefit or safety of the subject, or the like, if they, or any of them, be granted to a

man that is unexpert, and hath no skill and science, to exercise or execute the same, the grant is merely void, and the party disabled by law, and incapable to take the same, *pro commodo Regis et populi*; for only men of skill, knowledge and ability to exercise the same are capable of the same, to serve the King and his people." (Co. Lit. 3 b; Bac. Abr. Offices (I).)

"It is a general common law rule upon which, however, various exceptions have been engrafted by statute, that the King may terminate at pleasure the authority of officers employed by His Majesty." (Chitty, Prerog. 81.) See also Todd, Parliamentary Government in England, I., 326, 375.

Thus, apart from any statutory exception, such as exists, for instance, in the case of judges of the High Court, the Crown may dismiss any of its officers without cause shown, and it follows that no petition of right will lie on the part of any such officer so dismissed for damages for wrongful dismissal, or for pension or half-pay, or for any claim based upon such dismissal. The case, of course, is different in the case of civil officers, where there is some claim to a pension or annuity, or other such payment under a contract with the Crown, apart from any question of dismissal from or retention in the Crown's service. See the cases above, p. 346.

There have, however, been numerous cases where petitions of right and other proceedings have been launched in respect of claims which are inadmissible on the grounds stated above, and in the case of such petitions of right the Crown has occasionally granted the fiat, being of the opinion, for one reason or another, that the case should be tried.

Military and Naval Officers.

In *Gibson v. East India Co.* (1839), 5 Bing. (N. C.) 262, 274; 8 L. J. C. P. 193, it was said by Tindal, C.J.: "It is clear that no action could be supported against anyone to recover the arrears of half-pay granted by the Crown, at least unless the money has been specifically appropriated by the Government, and placed in the hands of the paymaster or agent to the account of the particular officer [*sed quære* as to this qualification, see *Gidley v. Viscount Palmerston* (1822), 3 B. & B. 275, and below, p. 643]. . . . Many grounds of inexpediency in allowing a claim of the present description to be recoverable in a Court of law readily suggest themselves. If the retired pension which is given for loss of services can be recovered by action, why should not the pay and allowances for actual service be equally so during their continuance? And yet how frequently is it not only expedient, but absolutely necessary, that military pay should be suspended and kept

in arrear beyond the day when it becomes due, and until the service, in respect of which it is earned, has been entirely completed?—not to mention the expense and inconvenience which must arise if a suit might be instituted by each individual officer, and the prejudice which such litigation would necessarily occasion to the military service.”

The absolute power of the Crown to dismiss military officers is again clearly shown in *In re Poe* (1833), 5 B. & Ad. 681, 688; 3 L. J. K. B. 33; and *Dickson v. Viscount Combermere* (1863), 3 F. & F. 527, 585. In *E. p. Napier* (1852), 18 Q. B. 692; 21 L. J. Q. B. 332, a mandamus was refused to compel the East India Company to pay certain arrears of pay due to the applicant as Commander-in-Chief of the forces of the Crown and the Company in India. See also *R. v. Secretary of State for War*, [1891] 2 Q. B. 326; 60 L. J. Q. B. 457, above, pp. 112, 114.

In *Grant v. Secretary of State for India in Council* (1877), 2 C. P. D. 445; 46 L. J. C. P. 681, where the cases are reviewed, it was held that the Crown, acting by the defendant, had a general power of dismissing a military officer at its will and pleasure, and that the defendant could make no contract with a military officer in derogation of such powers.

In re Tufnell (1876), 3 Ch. D. 164; 45 L. J. Ch. 731, was a petition of right by an army surgeon/claiming compensation from the Crown, not for dismissal from any office, but for being put on half-pay instead of continuing to hold his office, owing to alterations in the establishment. Malins, V.-C., pointed out that the effect of *Gibson v. East India Co.* was that, although the Crown might order an officer to retire on half-pay and prescribe that the half-pay should be of a certain amount, if the Crown thought fit to withhold that half-pay, it was absolutely impossible to recover it, and continues: “Every officer in the army is subject to the will of the Crown, and can be removed and put on half-pay, or dealt with as the Crown, with a view to the public convenience, thinks best. It is a power which is always considered to lie in the Crown, a rule which has never been departed from.”

De Dohsé v. R. (1886), 66 L. J. Q. B. 422, n.; 3 T. L. R. 114, was a petition of right by an ex-captain of the British German Legion, formed during the Crimean War, alleging that after the disbanding of the Legion the Government had promised him other employment, but had not provided him with any. The case was carried to the House of Lords, the Crown having succeeded on demurrer. Lord Halsbury, L.C., was of opinion that, even had there been such a contract, it must have been subject to a reservation of the Crown’s prerogative to dismiss the officer at pleasure, and that a contract

which purported to override that prerogative would be unconstitutional and contrary to public policy. In the Court below, as appears from the transcript of the shorthand notes, Brett, M.R., expressed himself still more strongly: "In my opinion not the Queen herself could make this contract; neither the Queen nor any servant of the Queen could make this contract."

Mitchell v. R., [1896] 1 Q. B. 121, n.; 6 T. L. R. 181, 332, was a petition of right of a similar kind, to which the Crown again granted the fiat and demurred. It was sought to distinguish the case on the ground that the arrangement, which the suppliant complained of as inadequate, was made with him after his retirement from his lieutenant-colonelcy in the Royal Engineers, and not while he was still in actual service. The Court held that this made no difference, and Fry, L.J., said: "I am clearly of opinion that no engagement between the Crown and any of its military or naval officers in respect of services either present, past or future can be enforced in any Court of law."

In the more recent case of *O'Sullivan's Petition of Right* (1903), where the suppliant, an ex-surgeon-major of the Army Medical Corps, claimed damages of various kinds for alleged wrongful conviction by a court-martial and for being discharged on a gratuity instead of on a pension, the Crown refused the fiat. It granted the fiat in the case of *Ryan v. R.* (1904), not reported, but informed the suppliant, who was an army nurse and sued for compensation for loss of office owing to changes in the establishment, that it would demur to the petition. Judgment was given for the Crown on the demurrer, on the ground that a petition of right would not lie in respect of such a matter, though the suppliant's case was a hard one.

In Scotland a similar result was arrived at in *Smith v. L. A.* (1897), 25 R. 112, where it was held that no action would lie against the Lord Advocate, representing the Crown, for the recovery of military pay, and in *Mackie or Mackin v. L. A.* (1898), 25 R. 769.

Civil Officers.

The Superannuation Act, 1834 (4 & 5 Will. IV. c. 24), s. 30, expressly provides that nothing in the Act contained shall extend or be construed to extend to give any person an absolute right to compensation for past services, or to any superannuation or retiring allowance under the Act, or to deprive the Treasury and the head or principal officers of the respective Departments of their power and authority to dismiss any person from the public service without compensation.

We are not dealing here with any question of "ancient offices," as to which see *Slingsby's Case* (1680), 3 Swanst. 178, and *Hill v. R.* (1854), 8 Moo. P. C. 138.

Shenton v. Smith, [1895] A. C. 229; 64 L. J. P. C. 119, was a claim for wrongful dismissal against the Government of Western Australia by a medical officer employed by them. It was held that a colonial Government stands on the same footing as the Crown in England with regard to the employment and dismissal of public servants, and that, "except in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown, not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind."

Exception must, perhaps, be taken to the opinion here expressed that the power to dismiss does not depend on the prerogative, and also to the opinion that it can be otherwise provided that servants of the Crown should hold their offices otherwise than at pleasure, unless this last statement be strictly limited to statutory provisions. A mere contract, which purported to make the tenure of an office permanent, would seem to be contrary to public policy, on the basis of the judgments in *De Dohsé v. R.* (1886), 66 L. J. Q. B. 422, n.; 3 T. L. R. 114.

In *Dunn v. R.*, [1896] 1 Q. B. 116; 65 L. J. Q. B. 279, it was definitely decided that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. This judgment, therefore, modifies the judgment in *Shenton v. Smith*, *ubi sup.*, as it has been already suggested that it ought to be modified. The claim was by petition of right on the part of a former consular agent, who alleged that he had been engaged as such for three years certain on behalf of the Crown, and who claimed damages for having been dismissed before the expiration of that period. Clearly - the dismissal of a civil servant may be in some cases just as important to the interests of the country as the dismissal of a military or naval officer.

The suppliant then proceeded, in *Dunn v. Macdonald*, [1897] 1 Q. B. 555; 66 L. J. Q. B. 420, by action for breach of an implied warranty of authority against the officer who had engaged him on behalf of the Crown, but with no better success.

The principle was re-affirmed in *Gould v. Stuart*, [1896] A. C. 575; 65 L. J. P. C. 82; but in that case it was held that certain statutory

provisions were intended to restrict the Crown's right in the matter. See also *Young v. Adams*, [1898] A. C. 469; 67 L. J. P. C. 75; and *Young v. Waller*, [1898] A. C. 661; 67 L. J. P. C. 80. In the last-cited case it was held, further, that the statutory provisions referred to in *Gould v. Stuart* did not take away the right of the Crown to abolish a civil office.

Jolley's Petition of Right claimed compensation for non-employment, at the remuneration arranged, as surgeon-superintendent of a coolie ship. The Crown granted the fiat, but demurred, and the petition was dropped.

The Crown refused the fiat to *Houghton's Petition of Right* (1901), a similar claim by a district engineer on a railway under the Colonial Office, and to *Bull's Petition of Right* (1902), a similar claim by a Resident Superintendent of the House of Lords, appointed and dismissed by the Lord Great Chamberlain.

Ray's Petition of Right (1888) was a claim by a sealer in the Probate Registry for a declaration that he had not resigned his office and for payment of arrears of salary. Under the special circumstances, the fiat was granted and the claim was settled.

The principles involved in the above cases may be summarised as follows:—(i) Even if there be a contract of service, the Crown's absolute power of dismissal must be deemed to be imported into it, whatever its terms; (ii) it is not for the Court or a jury to discuss and decide upon the goodness of the grounds of dismissal, or to consider the question whether there were any grounds for dismissal at all; (iii) the Crown's absolute power of dismissal can only be restricted by statute, and anything, short of a statute, which purports to restrict it, is void as contrary to public policy.

With special regard to superannuation allowances under Acts providing for such allowances, reference may be made to *Edmunds v. A.-G.* (1878), 47 L. J. Ch. 345, where it was held that it was for the Treasury to decide whether a pension should be granted to a public servant; but it seems to have been left open whether any proceeding would lie on the part of a public servant after the Treasury had decided to grant him a pension. But in *Cooper v. R.* (1880), 14 Ch. D. 311; 49 L. J. Ch. 490, which was a petition of right by a scripture-reader at Portland Prison for compensation for loss of office, it was held that no claim for superannuation allowance under the Superannuation Acts could be enforced by the civil tribunals of the country, and that civil servants must rely upon the decision of the Treasury, who will say whether they will take the claim into their favourable consideration or not. Their decision, whether erroneous or not, is made by the Acts absolutely conclusive and binding.

In *Smyth v. R.*, [1898] A. C. 782; 67 L. J. P. C. 129, an appeal from Victoria, it was held that a local statute entitled the appellant, the Public Prosecutor, to a superannuation allowance, although he held office during pleasure.

Claims to Land situated Abroad, in certain cases.

Re Holmes (1861), 2 J. & H. 527; 31 L. J. Ch. 58, was a petition of right lodged in this country claiming the restoration of land in Canada from the Crown as trustee, such land having been vested in the Crown by a colonial Act for the public purposes of the colony, and subject to such further provisions as might from time to time be enacted by the local Legislature. The Crown succeeded on demurrer, on the ground that the English Courts could not entertain the matter. It was urged by the suppliant that though no direct remedy *in rem* could be given in that Court as to land in Canada, yet a decree *in personam* might be made to which the Canadian Courts would give effect; and that the Crown could for this purpose be regarded as a trustee present in this country. Wood, V.-C., observed: "It is said that the Queen is present here, and therefore amenable (by virtue of the recent Act) [*i.e.*, the Petitions of Right Act, 1860] to the jurisdiction of this Court. But it would be at least as correct to say that, as the holder of Canadian land *for the public purposes of Canada*, the Queen should be considered as present in Canada and out of the jurisdiction of this Court It is enough to say that when land in Canada is vested in the Queen, *not by prerogative, but under an Act of the Provincial Legislature, for the purposes of the province, and subject to any future directions which may be given by the Provincial Legislature*, I hold that, for the purpose of any claims to such land made under the provincial statutes, the Queen is not to be regarded as within the jurisdiction of this Court. I wish to rest my decision upon the broadest ground—that it was not the object of the Petitions of Right Act, 1860, to transfer jurisdiction to this country from any colony *in which an Act might be passed vesting lands in the Crown for the benefit of the colony*, and upon that ground I allow the demurrer: dismissing other questions, I prefer to rest upon the higher ground that this land cannot be withdrawn from the control of the Canadian Legislature and brought within the jurisdiction of this Court merely on the technical argument that the Queen, *in whom it is vested for Canadian purposes*, is present in this country."

This judgment, as far as it goes, is unexceptionable, but its limitations are clearly marked by the passages here printed in italics. Where the local Legislature has vested land in the Crown for the

purposes of the colony or possession, the tenure is really to be regarded as that of the local Government, and not as that of the Imperial Crown. Any proceedings in respect of it must be taken as against the local Government, and under any local laws or regulations which there may be governing such proceedings. In such a case an English Court rightly applies the general principle, which has been laid down in numerous cases, that it will not entertain suits for the recovery of land situated abroad. In the same way, in *Reiner v. Marquis of Salisbury* (1876), 2 Ch. D. 378, the Court refused to entertain any proceedings in aid of a writ against the Secretary of State for India for the recovery of land in India. The Court would also rightly refuse to apply the remedy *in personam* against the Crown as trustee or *quasi-trustee*, resident within the jurisdiction, which has commonly been applied by Courts of Equity in the case of lands situated abroad. (There is the further difficulty as to the enforcement of trusts against the Crown: see below, p. 482.) The Crown, as has been pointed out already, cannot be regarded as resident in the jurisdiction for this purpose, although it may be technically so resident, inasmuch as the property in question is not in substance, though it may be technically, vested in the Imperial Crown, but is really vested in the Crown viewed as the Government of a particular dependency.

But the case appears to the author to be quite different where land abroad is vested in the Crown for imperial purposes. In such a case, it is submitted, the proper place, and the only place, where proceedings could be taken against the Crown for the recovery of such land by a person claiming to be entitled, is this country, and the proper remedy is petition of right. Take, for instance, such land as that discussed in *A.-G. of British Columbia v. A.-G. of Canada*, [1906] A. C. 552; 75 L. J. P. C. 114, which, though situate in the Province of British Columbia, was for many years the property of the Imperial Government, as such, and did not belong either to the Dominion or to the Province. Many other instances could be adduced of land in different parts of the world which is so vested in the Imperial Government.

In the case of such land there is no difficulty as to the effect of an order of the English Court. By sect. 10 of the Petitions of Right Act, 1860, the judgment has the effect of a judgment of *amoveas manus*, and the Crown is put out of possession without more (see below, p. 395).

In *Lautour v. A.-G.* (1865), 5 N. R. 102, 231, the Court put the Crown to its answer to a bill filed in pursuance of a petition of right, whereby the suppliant sought a declaration that the Crown ought to grant him land in Western Australia.

The question of a special fiat, ordering right to be done in the place where the land claimed is situate, is discussed below, p. 381.

Claims arising out of certain International Matters.

Baron de Bode v. R. (1851), 3 H. L. C. 449, was a petition of right for the payment to the suppliant of part of the compensation for the losses sustained by British subjects, which, under certain conventions, had been paid by the French to the British Government. The general question of the applicability of the procedure by petition of right to such a claim was argued, but the decision only proceeded upon the basis that the suppliant had made his claim unsuccessfully to the commissioners appointed under a statute to settle such claims, and that he could not now proceed by petition of right.

In *Rustomjee v. R.* (1876), 2 Q. B. D. 69; 46 L. J. Q. B. 238; affirming 1 Q. B. D. 487; 45 L. J. Q. B. 249, the Queen of England and the Emperor of China had made a treaty, whereby the latter agreed to pay the British Government a large sum on account of debts due to British subjects from certain Chinese merchants. The money had been duly received by the British Government. The suppliant, one of the said British merchants, claimed, by petition of right, payment of sums alleged to be due to him from one of the said Chinese merchants. The petition is set out in the report in 1 Q. B. D. 487. Judgment was given for the Crown on demurrer, on the grounds that there was nothing in the terms of the treaty to make the Crown agent or trustee in respect of any specific sum for the suppliant or any other person, and that, in all that relates to the making and performing of a treaty with another sovereign, the Crown cannot be either a trustee or an agent for any subject.

Kinloch v. R., [1882] W. N. 164; [1884] W. N. 80, was a somewhat similar case, so far as the grounds of decision were concerned, though the property against which the suppliant claimed was in that case booty of war. See further as to this case and the preceding case of *Kinloch v. Secretary of State for India in Council* (1882), 7 A. C. 619; 51 L. J. Ch. 885, above, pp. 25—27. Reference may also be made here, by way of parallel, to several of the other cases cited in the article on the India Office.

West Rand Central Gold Mining Co. v. R., [1905] 2 K. B. 391; 74 L. J. K. B. 753, was a claim by petition of right for gold commandeered by the Transvaal Government before the outbreak of the South African War, or the value thereof. The ground of the claim was that a conquering State must be taken to be liable for the financial responsibilities of the conquered State incurred before the

outbreak of war. The Court held that such a claim could not be enforced in a municipal Court, and that there was no such principle of international law as that upon which the claim purported to be based.

Two petitions of right had been lodged in respect of these seizures of gold—one by the West Rand Gold Mining Co. and one by the New Heriot Gold Mining Co. The Crown, thinking it advisable that the matter should be judicially decided, granted the fiat to the former only, but warned the suppliants that the demurrer, which appears in the report, would be pleaded and relied upon. There were other objections to the petition, one that it claimed in respect of what, so far as the declaration went, might well have been a tort; another (which, however, was not taken at the trial (see above, p. 336)) that the claim was for the value of a converted chattel.

CHAPTER III.

WHO MAY PRESENT A PETITION OF RIGHT.

It has been doubted whether anyone but a British subject can approach the Crown by petition of right. There appears to be no very good reason for this doubt, and there is nothing to support it in the Petitions of Right Act, 1860. The use of "subject" in sect. 7 does not seem to the author to amount to a pronouncement on the matter. There must, of course, be certain limitations in the right of an alien individual or corporation to adopt this procedure, due to the nature of the subject-matter, as has been explained above, at pp. 340, 360, in connection with contracts made abroad and land situated abroad; but these limitations apply just as much to petitions of right lodged by British subjects. The Court, also, on the application of the Crown, would no doubt impose upon the suppliant, if resident out of the jurisdiction, the conditions usually imposed upon a plaintiff under similar circumstances. Sect. 7 of the Petitions of Right Act, 1860, expressly applies the current practice as to security for costs to petitions of right.

It is true that Staundford, *Praerog.* 72 *sqq.*, speaks of petition of right as a remedy of "the subject," but he was not applying his mind to the question of subject as against alien; and, indeed, in his time the question would probably have remained an academic one. On the other hand, Fitzherbert, *Abr. Error*, 8, speaks merely of a person, "*homme*," as proceeding by petition of right; and so does Brooke, *Abr. Prerog.* 2, who cites him. Blackstone, 3 *Comm.* 256, speaks of King and subject in this connection, but the same observation applies to him as to Staundford, and also to Chitty, *Prerog.* 340, 341. The remark of the last-named, that petition of right is "the birthright of the subject," does not appear to be borne out by his authorities. It seems probable to the author that, subject to any disabilities to which an alien person or corporation may still be subject, the Courts would not hold that an alien could not proceed by petition of right. They would remember that, at the date of the early authorities cited above, the right of an alien to maintain even a personal action was by no means admitted.

In *Rustomjee v. R.* (1876), 2 *Q. B. D.* 69; 46 *L. J. Q. B.* 238; affirming 1 *Q. B. D.* 487; 45 *L. J. Q. B.* 249, no doubt, the petition

contained an allegation that the suppliant was a subject of the Queen, but this was essential to the claim in that case, since the fund, a share of which the suppliant claimed, was only distributable among British subjects. A similar observation applies to *Baron de Bode's Case* (1845), 8 Q. B. 208; see in particular the report in error (1848), 13 Q. B. 364, 382.

On the other hand, *In re von Frantzius* (1858), 2 De G. & J. 126; 27 L. J. Ch. 368, was an instance of a petition of right by an alien, to wit, a native of Prussia, apparently resident in Prussia, and no objection was taken on the part of the Crown. *De Dohsé v. R.* (1886), 66 L. J. Q. B. 422, n.; 3 T. L. R. 114, was a petition of right by an ex-captain in the Austrian Army, who still retained his Austrian nationality, but resided at New Cross. The point was raised in the pleadings by the Crown—not in the demurrer, as it presumably would have been had the Crown thought it a complete bar to the proceedings, but in the answer—in these terms: “The suppliant was a person born out of Her Majesty’s dominions and not of English parents.” No allusion, however, seems to have been made to this plea in the course of the proceedings in any Court, and it is not repeated in the printed case lodged by the Crown in the House of Lords. It may be remarked that, to judge by the form of the Crown’s plea, the Crown’s advisers meant to suggest that neither an alien nor a naturalised alien could proceed by petition of right. It has been pointed out above that there seems to be no authority for the former part of this proposition; still less is there any for the latter.

The author’s view is rather supported by the fact that by the Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 20 (as to which, see above, p. 348), it is provided that “any person claiming to be interested in colonial stock to which this Act applies” may present a petition of right in England in respect of it. “Any person” clearly includes aliens, and the Legislature did not think it necessary to be more specific, as it ought to have been, if by the general law an alien could not present a petition of right.

For a petition of right presented, without objection, by a colonial subject of the Crown, see *In re Gosman* (1881), 15 Ch. D. 69; 49 L. J. Ch. 590, though the fact is not mentioned in the report.

There seems to be no reason why, subject to the limitations contained in the two preceding chapters, any person or persons should not present a petition of right who would be entitled to bring an action against a subject, whether jointly or severally, by assignment, representation, or succession.

In *Tobin v. R.* (1864), 16 C. B. (N. S.) 310; 33 L. J. C. P. 200, the

petition was continued by one of two suppliants after the death of the other.

In *Baron de Bode v. R.* (1848), 13 Q. B. 364 (in error), it was held that the administrator of a suppliant might bring error on a judgment given against his testator.

In *In re Palmes* (1899), not reported, an order was made for the revivor of a petition of right, the proceedings to be carried on by the executrix of the deceased suppliant.

Instances have been frequent of petitions of right by representatives or successors of deceased persons for the recovery of their property from the Crown (see above, p. 343).

As to assignees, *In re Rolt* (1859), 4 De G. & J. 44, was a petition of right by one of the assignees of a bankrupt contractor, on a contract of his completed by them by arrangement with the Admiralty (compare the similar case of *Broadbent & Co. v. R.* (1900), not reported), and in *Grays Chalk Quarries Co., Ltd. v. R.* (1900), not reported, we find a petition of right presented, without objection, by the mere assignees of a debt alleged to be due from the Admiralty to a contractor. *Imperial Supply and Cold Storage Co., Ltd. v. R.* (1904), not reported, was a petition of right for damages for breach of a contract alleged to have been assigned to the suppliants with the consent of the War Department. A form of such a petition is printed below, p. 403.

CHAPTER IV.

PRACTICE—THE PETITIONS OF RIGHT ACT, 1860.

The Petitions of Right Act, 1860 (23 & 24 Vict. c. 34).

THE Act is printed in full below, p. 685. It is purely a procedure Act and does not affect the prerogative of the Crown except in respect of the matters of practice and procedure with which it deals, and in respect of costs. This appears clearly from the title of, and the recital to, the Act itself; and see the remarks of Smith, J., in *In re Nathan* (1884), 12 Q. B. D. 461, 468. It is not even a substitute for the cumbrous old practice, but merely an alternative, since, by sect. 18, it is lawful for a suppliant to proceed as before the passing of the Act. It is so unlikely that anyone would wish to do so that it appears to be unnecessary to discuss the earlier practice. Those who are curious with regard to it will find specimens in *In re De Bode* (1840), 2 Ph. 85; 1 Coop. t. Cott. 143; *In re Viscount Canterbury* (1840), 2 Ph. 85; 1 Coop. t. Cott. 143; *In re Robson* (1846), 2 Ph. 84; 16 L. J. Ch. 105; *In re von Frantzius* (1858), 2 De G. & J. 126; 26 L. J. Ch. 797; 27 L. J. Ch. 368; *In re Rolt* (1859), 4 De G. & J. 44. After perusing these precedents, probably no one will be desirous of adopting a similar procedure.

It is now proposed to deal with the special practice on petition of right. The Crown's prerogative as regards practice generally is dealt with in Book VI. of this work.

The Petition of Right.

Its Form.

No particular paper, shape or type is prescribed. The petition may be on any paper, of any size, and either written, type-written or printed. In practice, petitions are lodged of every sort, size and shape.

In what Court it is to be Entitled.

By sect. 1 of the Act the petition may, if the suppliant thinks fit, be entitled in either the King's Bench or the Chancery Division of the High Court of Justice, namely, where the subject-matter of such petition or any material part thereof would have been cognisable if the same

had been a matter in dispute between subject and subject. It will be remembered that under the Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 52 (see above, p. 347), certain petitions of right may be entitled in the Probate, Divorce and Admiralty Division (Admiralty). See also below, p. 399, as to petitions of right which may be entitled in the Irish Courts.

At the present time most petitions of right are entitled in the King's Bench Division, but a fair number go to Chancery, particularly those concerned with claims to the estates of deceased intestates, with which the Chancery Division is most apt to deal. Petitions of right in Chancery, whether claiming legal or equitable relief, have been so numerous since the passing of the Act, and the functions of Courts of law and equity have now been so closely assimilated, that it would be unprofitable to discuss whether the Act, in stating that petitions of right might be so entitled, was not overriding the previous practice. The earlier method appears to have been that adopted in *Clayton v. A.-G.* (1834), 1 Coop. t. Cott. 97, whereby a petition of right was lodged, praying, amongst other things, that the suppliant might have leave to sue the Attorney-General, together with other named parties, in Chancery (a proceeding which was otherwise inadmissible; see *Reeve v. A.-G.* (1741), 2 Atk. 223). For other instances of the same procedure, see *Taylor v. A.-G.* (1837), 8 Sim. 413; *Monckton v. A.-G.* (1850), 2 Mac. & G. 402; *s. n. In re Robson* (1846), 2 Ph. 84; *Lautour v. A.-G.* (1865), 5 N. R. 102, 231. This last case was started in 1857, before the passing of the Act of 1860.

The Parties.

The Suppliant.

This is the name which is given to the plaintiff on a petition of right. In earlier times "petitioner" was the common title. On the question who may be suppliant, see above, p. 364.

The King.

The Act, in sects. 11, 13, 14, which deal with judgment and costs, contemplates the King as appearing in two capacities, one public and the other private. Something further will be said as to this when these sections are dealt with (below, pp. 396, 397); but the author is unaware of any case in which the Sovereign has appeared in her or his private capacity, and in which the machinery provided for such a case has been put in motion. It is not altogether easy to draw a line between the two classes of cases. Probably the Sovereign would be regarded as appearing in his private capacity in respect of a con-

tract entered into on his own personal behalf or on behalf of his household, or in respect of any claim which affected property held by him in his personal capacity and not in right of his Crown, and which would have to be satisfied out of the funds controlled by the Treasurer of his Household, as provided by sect. 14, and not out of the funds controlled by the Treasury. That section describes petitions of this class as relating to "any private property of or enjoyed by Her Majesty, or any contract or engagement made by or on behalf of Her Majesty, or any matter affecting Her Majesty in her private capacity."

Two related questions arise here, whether a petition of right lies against a Sovereign for property received by one of his predecessors, and whether a petition of right abates on the demise of the Crown.

Both these would seem to be such matters of prerogative in respect to remedies against the Crown as are preserved by sect. 7 of the Act, and there is no statutory provision respecting them. The prerogative of the Crown, then, at common law, whatever it is, still survives with regard to them.

In respect of both it must be remembered that the fiat is a personal order that right be done, given by the Sovereign, and *primâ facie* it is only a fiat granted by an individual Sovereign, and would not necessarily bind his successor. It would, however, be quite open to a succeeding Sovereign to adopt his predecessor's fiat; and, of course, in an ordinary case this would be done. See also s. 5 of the Act.

In *Viscount Canterbury v. A.-G.* (1843), 1 Ph. 306, it was pointed out by Lord Lyndhurst, L.C., that, even if it were assumed that a claim in tort could be sustained against the Crown, it was quite clear that such a claim, on the ordinary principle, could not be sustained against a succeeding Sovereign where the tort had been committed by the servants of a predecessor. *A.-G. v. Köhler* (1861), 9 H. L. C. 654, is a distinct judgment that money paid to one Sovereign as part of the droits of the Crown (in that case the personal estate of an intestate without next of kin) could not be recovered from that Sovereign's successor, and that the statutory arrangements whereby such droits and other revenues of the Crown were commuted by successive Sovereigns for a fixed annuity made no difference. The remedy, if any, it was pointed out, was against the executors of the Sovereign who received the property. (See also *Ryves v. Duke of Wellington* (1846), 9 Beav. 579, 601; 15 L. J. Ch. 461.) Such executors probably could take advantage of the 20 years' limitation provided by the Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), s. 13. But the question could scarcely arise now in respect of an intestate's estate, owing to the fact that such moneys are

vested in the Treasury Solicitor as a corporation (see below, p. 495), but in the case of other moneys received as *droits* by the Crown the principle would seem to apply. As regards moneys received by the Crown in its public capacity, however, it is not likely that the Crown would raise the question; but as regards the private estate of the Sovereign, there seems to be no reason why the Crown should not refuse the fiat in such a case, or set up the plea in its demurrer or answer.

As to abatement, it seems fairly clear that a petition of right against the Sovereign in his private capacity would abate, if the succeeding Sovereign insisted upon it, for the King dies *in hoc individuo*, though not *in genere* (7 Rep. 30 b). With regard to petitions against the Sovereign in his public capacity, it appears to the author that the principles enunciated in the resolution of the Judges after the death of Queen Elizabeth, reported in 7 Rep. 30 b, 31 a, which deals with suits by the King, does not apply to proceedings against the King, launched by virtue of his predecessor's fiat, and that a petition of right abates on the demise of the Crown. The filing of a petition of right after fiat does not seem to him to be equivalent to the placing on record of an information on behalf of the King; and, if it is not, there seems to be no logical reason why a petition of right should not abate just as much as an information on behalf of the King would abate, were it not for statutory provisions to the contrary.

Third Parties.

There is a provision in sect. 5 of the Act for cases where the real or personal property, or any right in or to the same, which is in dispute, has been "granted away or disposed of by or on behalf of the Sovereign or his predecessors." It is provided that a copy of the petition and fiat (which must be printed and sealed at the Central Office, and impressed with a 5*s.* stamp; see Chancery Rule 3, below, p. 804; and Annual Practice, note to Ord. LII. r. 16) shall be served upon or left at the last, or usual, or last-known place of abode of the person in the possession, occupation, or enjoyment of such property or right, endorsed with a notice in the form set forth in the Schedule (No. 3) to the Act, requiring such person to appear thereto within eight days, and to plead or answer thereto in the Court in which the petition shall be prosecuted within fourteen days after it has been served or left as aforesaid. Such time for pleading may, however, be extended by the Court or a judge. (See below, p. 385.)

The same section abolishes the necessity for issuing any *scire facias* or other process to such person for the purpose of requiring him to appear, and plead or answer to the petition.

This last provision is explained by 2 & 3 Edw. VI. c. 8, s. 13 (repealed by the Escheat (Procedure) Act, 1887, s. 3, and Sched., below, p. 738). That section provides for a *scire facias* to the King's patentee in cases of traverse of inquisition. See also Staundf. Praerog. 73 b, where it is said that in every petition where the King has granted the land over to another, a *scire facias* must be awarded against the patentee. A *scire facias* was the natural process for obtaining the revocation of a Crown grant, and this section means that there is no longer any necessity to issue a *scire facias* to the Crown's grantee to show cause why the grant should not be revoked and so get him before the Court, and that the petition of right proceedings, if service is made as described in the section, will decide the question of title not only as between the suppliant and the Crown, but also as between the suppliant and the grantee, and the Crown and the grantee. Very curiously, however, the section provides for service on "the person in the possession, occupation, or enjoyment of such property or right." The author apprehends that these words may be interpreted to include the owner and any other persons who have any estate or interest in any real or personal property in dispute. If it be not so, a judgment given against the occupier would have to be taken to bind the owner, who had had no notice of the proceedings and was no party to them, which can hardly be the case. It would be safer for the suppliant to serve all persons within his knowledge who had any interest in the property in question. If any person with interest was not so served, it is apprehended that he could apply to be joined as a defendant, although there is no specific provision to that effect. The persons so served with a petition of right will enter an appearance in the form in the Schedule (No. 4) to the Act, and in manner provided in R. S. C. Ord. XII.

It will be noted that the right of joining a third party with the Sovereign is limited to cases where the property, or any right thereto, which is claimed, has been granted away or disposed of by or on behalf of the Crown. The earlier practice, which, by sect. 18 of the Act, may still be followed, did not permit of any joinder at all. This was clearly pointed out by Wickens, V.-C., in *Kirk v. R.* (1872), L. R. 14 Eq. 558, 563: "Before the Petition (*sic*) of Right Act (23 & 24 Vict. c. 34), the petition was addressed to the Queen alone, and had this peculiarity, that you had to establish, *ex parte*, a *prima facie* case on oath before the petition could be heard at all. On a petition of right proper, before the Act, a subject could not have been joined with the Crown." He then goes on to say, erroneously, that in *Rolt v. A.-G.* (see 4 De G. & J. 44) a bill was filed against the Attorney-General following a petition of right, since the Act. As a matter of fact,

Rolt's petition of right was before the Act, and hence the old procedure was followed, although the bill may have been heard after the passing of the Act. He continues: "It seems to me there is nothing which in the least authorises the joining of a subject with the Queen as respondent to the petition itself." He ought, of course, to have referred to the exception which is provided for under sect. 5 of the Act, which has just been mentioned. In the case actually before him the joinder was obviously wrong. The suppliant had joined a military engineer with the Sovereign, and sought an order for an injunction and costs against him. This case certainly did not fall within sect. 5 of the Act.

In *In re Gosman* (1880), 15 Ch. D. 69; 17 Ch. D. 771; 49 L. J. Ch. 590; 50 L. J. Ch. 624, though the fact does not appear in the report, the Treasury Solicitor, to whom the Crown had assigned by warrant the leaseholds claimed by the suppliant, was joined with the Sovereign as third party. The principal answer was put in by the third party, and the Attorney-General in his answer merely put the suppliant to his proof, and claimed all such right and interest in the premises mentioned in the petition of right as he on behalf of Her Majesty should appear to have therein, and submitted the same to the Court, and prayed the Court to take care of the rights and interests of Her Majesty.

In *Kinloch v. R.*, [1882] W. N. 164; [1884] W. N. 80, the Secretary of State for India was joined with the Sovereign. No objection was taken to this, and it was probably right, as falling within sect. 5, since the booty, in respect of which the claim was made, was in the hands of the Secretary of State.

In *Windsor and Annapolis Rail. Co. v. R.* (1886), 11 A. C. 607; 55 L. J. P. C. 41, a third party seems to have been properly joined, under a Canadian section corresponding to sect. 5.

As to the method by which a party improperly joined could bring his objection before the Court, Wickens, V.-C., in *Kirk v. R.* (1872), L. R. 14 Eq. 558, 563, doubted whether a demurrer would be the proper method, but, with all respect to the learned judge, who had special reasons for being familiar with prerogative practice, the author does not see why the point could not be raised by demurrer. There seems to be no reason, however, if the author's interpretation of sect. 7 of the Act is right (see below, p. 388), why the party should not apply to be struck out under Ord. XVI. r. 11.

If, however, the suppliant desires it, in a case not within sect. 5, he is still entitled to proceed under the cumbrous old procedure alluded to at p. 367, above, whereby a petition of right is lodged praying for leave to proceed in the Chancery Division against the

Attorney-General and other parties. It would, however, be much more desirable to proceed by petition of right, as far as the claim against the Crown was concerned, and institute a separate action against the individual. The two could then be heard together.

The Body of the Petition.

By sect. 1 of the Act the petition is to be addressed to His Majesty in the form or to the effect of the form in the Schedule (No. 1) annexed to the Act, and must state the christian and surname and usual place of abode of the suppliant and of his solicitor, if any, by whom the same is presented, and set forth with convenient certainty the facts entitling the suppliant to relief. "Relief" is defined by sect. 16 as comprehending every species of relief claimed or prayed for in the petition, whether a restitution of any incorporeal right, or a return of lands or chattels, or a payment of money or damages or otherwise.

Numerous precedents will be found below, pp. 401 *sqq.*

It has already been pointed out (above, p. 330) that care should be taken in the petition to show fully the matters in respect of which the claim is made, in order that the advisers of the Crown may be able to advise, with full information as to the facts, whether the fiat should be granted or not. Suppliants, however, often find themselves under the necessity of disguising, with more or less success, their real cause of complaint, in the hopes of snatching a fiat and ventilating their grievances, and perhaps escaping defeat on demurrer. But a petition of right ought to be drawn with at least as much particularity as a statement of claim. A clear statement to this effect will be found in *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391; 74 L. J. K. B. 753: "We think it right to say that we must not be taken as acceding to the view that the allegations in the petition disclosed a sufficient ground for relief. The petition appears to us demurrable for the reason that it shows no obligation of a contractual nature on the part of the Transvaal Government. For all that appears in the petition the seizure might have been an act of lawless violence. . . . We do not assent to the proposition . . . that it is sufficient to allege what may be a ground of action if something else is added which is not stated. Upon all sound principles of pleading it is necessary to allege what must, and not what may, be a cause of action, and unless the obligation alleged in the present instance arose out of contract it is clear that no petition of right could be maintained." The Court then quotes the judgment of Willes, J., in *Gautret v. Egerton* (1867), L. R. 2 C. P. 371; 36 L. J.

C. P. 191: “. . . The plaintiff must, in his declaration, give the defendant notice of what his complaint is. He must recover *secundum allegata et probata*. What is it that a declaration of this sort should state in order to fulfil these conditions? It ought to state the facts upon which the supposed duty is founded, and the duty to the plaintiff with the breach of which the defendant is charged,” and then the Court adds: “I need scarcely say that in dealing with a petition of right, which must be based upon contract [*i.e.*, as opposed to tort] that observation would of course have its full force and effect.”

In *De Dohsé v. R.* (1885), 1 T. L. R. 509, in the Court of Appeal, as appears from the transcript of the shorthand notes in the author's possession, Baggallay, L.J., said, “We have got here a number of various loose statements, made from time to time, apparently in the hope that, with a large mass of these irrelevant and doubtful expressions, it might be said that a contract could be found out, instead of stating it in clear and plain terms. I think the experience of those who have had to do with petitions of right before is very much in the direction that that is the usual form in these petitions of right which really have but little or no foundation whatever. They are put in vague and doubtful terms in the hope that something like a contract may be picked out;” and Bowen, L.J., said, “I agree with what has been said by my learned brothers that this petition of right is stated in the loose form to which we are all accustomed in petitions of right, in the hopes that the mass of allegations, which did not amount to a contract, might pass the demurrer of the Attorney-General.”

It is quite clear, *pace* Mr. Clode, that certain observations of Erle, C.J., and Willes, J., in *Tobin v. R.* (1863), as reported in 32 L. J. C. P. 216, at pp. 221, 224, are not in the least contrary to this. It is shown clearly by the report of the same case in 14 C. B. (N. S.) 505, at pp. 519, 524, that they only refer to the particular petition of right then in question, and are not intended to be general statements as to how vague a petition of right can be allowed to be.

It does not appear to the author that the statements in Chitty, Prerog. p. 345, as to the necessity of alleging the whole of the titles or claim of the Crown in a petition of right are any longer valid. The reasons given do not seem to apply now, the Crown has never in recent times insisted on any such matter, and, moreover, by sect. 7 of the Act the current system of pleading applies, and there is nothing in the Act to preserve any such privilege of the Crown. The existence, in spite of the Act, of the Crown's prerogative in its own pleadings rests on a different basis, as we shall see hereafter (pp. 385, 361).

The Prayer.

The most approved form of prayer is the general form praying that the petition may be endorsed "let right be done" (see the precedent printed below, p. 404). If this form is used, the actual claim which the suppliant puts forward is enunciated in the body of the petition, either in the form of a submission or of a prayer. This appears to the author to be the most correct and most respectful way of framing the petition. But frequently the petition concludes with a special prayer, just as in an ordinary statement of claim, asking for the relief sought. It will be observed that the form in the Schedule (No. 1) to the Act throws no light on the matter.

The claim, whether contained in the body of the petition or in the prayer, need not be confined to the mere claim for restoration or payment; it may also embrace all such ancillary remedies as are necessary for the satisfaction of the suppliant's claim, so long as such remedies are of such a nature as the Court could grant against the Crown. The claim for a declaration, for instance, if it be made in connection with, and as ancillary to, a claim for which a petition of right lies, is perfectly proper. But a claim for an injunction or a receiver must not be made, as no Court could grant it. Apart from such relief as the prerogative precludes the Court from granting, there is no limitation placed by the Act, ss. 9, 16, on the nature of the relief which may be prayed and granted. But, of course, all relief prayed must fall within the ambit of, or be ancillary to, the matters described in Chapter I. of this Book. In the case of the *Clyde Shipping Co., Ltd.'s Petition of Right* (1900), the fiat was refused to a petition, which merely sought a declaration as to the meaning of sect. 604 of the Merchant Shipping Act, 1894. Again, *Brown's Petition of Right* (1903), prayed, amongst other things, an inadmissible declaration that certain moneys claimed from the suppliant by the Inland Revenue authorities, but not yet paid by him, were not due from him to them.

The Signature.

A petition of right must be signed by the suppliant, his counsel or solicitor (sect. 1).

The Lodging of the Petition with the Home Secretary.

The petition, when drafted, must be left with the Secretary of State for the Home Department (sect. 2), in order that it may be submitted to the King for his consideration, and in order that the King, if he

shall think fit, may grant his fiat that right be done; and no fee or sum of money is payable by the suppliant upon his so leaving his petition, or upon his receiving it back.

The Home Secretary, on receiving the petition, transmits it to the Department of the Government, if any, to which, on inspection, it appears to refer, in order that it may favour him with its observations on the subject, with any facts which it thinks relevant to the matter at issue, and with its opinion, if it desires to express it, as to whether the Crown should be advised to grant the fiat or not. Such communication from the Department affected, together with any observations the Home Office thinks fit to make, are then sent, along with the petition, to the Attorney-General. He, with the unofficial assistance of the Junior Counsel to the Treasury, then reports to the Home Office whether, in his opinion, the Crown should be advised to grant or to refuse the fiat.

In the peculiar case of *Irwin v. Grey* (1862), 3 F. & F. 635, an action was brought against the Home Secretary for damages for failing to submit a petition of right to the Crown. The Home Secretary, called by the plaintiff, gave evidence that he had submitted the petition to the Crown, but added that he had advised the Crown not to grant the fiat. It was held that there was no case to go to the jury. The Home Secretary, it appears, ought not to have been asked what his advice was, nor to have volunteered the statement. See as to this matter, below, p. 596.

In *In re Mitchell* (1896), 12 T. L. R. 324, Bruce, J., remarked that if the Home Secretary capriciously refused to consider a petition of right, it might be that the suppliant would not be without a remedy. The decision of this matter will depend on the view taken of sect. 2 of the Act. Does it or does it not impose any duty on the Home Secretary as regards the suppliant, in addition to his duty towards the Crown?

The Fiat.

The Grant of the Fiat is Voluntary.

There is nothing in the Petitions of Right Act, 1860, to affect the entirely voluntary nature of the grant of the fiat. By sect. 2 the Crown, if it shall think fit, may grant the fiat, and, by sect. 7, the Act is to give the subject no new remedy against the Crown. In *Tobin v. R.* (1863), as reported in 32 L. J. C. P. 216, at p. 221 (the report in 14 C. B. (N. S.) 505, at p. 521, is not so clear on this point), Erle, C.J., said: "The words of sect. 2, so far from giving the subject a right of action against the Queen absolutely, which every subject has,

who claims to have an action against a fellow-subject, by suing out a writ, are [he quoted part of the section]. The prerogative is recognised and remains," and he then referred to *Irwin v. Grey*: see above, p. 376. This seems undoubtedly to be the proper view. In *Ryves v. Duke of Wellington* (1846), 9 Beav. 579, 600; 15 L. J. Ch. 461, Lord Langdale, M.R., said: "I am far from thinking that it is competent to the King, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a petition of right. The form of the application being, as it is said, to the grace and favour of the King, affords no foundation for any such suggestion." No doubt it is inconceivable that the King would capriciously refuse to allow right to be done, but surely it would be "competent" to him to do so, and, in law, no caprice or irregularity could be attributed to him for so doing. It is also submitted that Bowen, L.J., went too far in the following observations, which he made in *In re Nathan* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 229: "Everybody knows that that fiat is granted as a matter, I will not say, of right, but as a matter of invariable grace by the Crown wherever there is a shadow of claim; nay, more, it is the constitutional duty of the Attorney-General not to advise a refusal of the fiat unless the claim is frivolous." It is the constitutional duty of the Attorney-General to advise the Crown to the best of his ability on the matters which are submitted to him, including the question whether a particular petition of right ought to receive the fiat or not. But his duty is not fettered by any obligation to advise the Crown to fiat all petitions of right except those which are frivolous.

Cases might easily be adduced, in which the Attorney-General might think it his duty to advise a refusal of the fiat, where the claim was anything but frivolous. Lord Campbell, *Lives of the Chancellors*, VII. 425, combating the view that any sort of petition of right ought to receive the fiat, and that the Court should be left to say whether it disclosed any ground of relief, says: "That [*i.e.*, the Sovereign's] consent cannot be properly withheld where there is any feasible ground of suit, but ought to be withheld where clearly and certainly no relief can be given. The Attorney-General is answerable to Parliament for the advice he gives upon this subject. . . . There is no authority for the contrary doctrine." In any event it does not appear to lie within the province of any Court to set limits on the discretion of the Crown, or on the advice which the Attorney-General may think fit to give the Crown.

The Crown, then, may grant or refuse the fiat at its absolute discretion. It may grant the fiat to a portion of the petition, or to the whole of it; it may grant the fiat to the petition as it stands, or may

insist upon amendments before the fiat is granted. One of the things which it may alter, it is submitted, is the Court or venue; as to which, see below, p. 380.

The Fiat may be granted with Qualifications.

The words of sect. 2 of the Act do not, it is submitted, limit the form of the fiat to the mere statement "Let right be done." The granting of the fiat being entirely voluntary, it would seem to follow that the King may grant his fiat in whatever words he pleases, and with whatever qualifications he chooses.

Staundford, Praerog. 73 a, is particularly definite on the subject: "And note, that when the petition is endorcéd [the endorsement was equivalent to what is now called the fiat], the partie must follow and pursue the same according to the indorcement, or otherwise hys suit is voide: because the endorcement is his warrant therin, as appeareth in [Fitzh. Abr.] Petition 1 M. 18 E. 3, [3] P. 22 E. 3. 5, and Petition 18 H. 46 E. 3, and therefore some time bills of petition be endorcéd and sent into the Kinges Bench or Common place, and not into the Chauncerie, and that groweth upon a speciall conclusion in his petition, and a speciall endorcement upon the same, for the general conclusion is, 'que le Roy luy face droit et reason,' which is as much as if he had prayed restitution of that that he sueth for: And there upon such a generall conclusion the endorcement is 'Soit droit fait as parties,' which ever is delivered unto the Chauncelor, as is declared. But if the conclusion in the petition be speciall and the endorcement speciall, then they shall proceede according to the said speciall endorcement. . . . So ever the following and the pursuing of a thing must be according to the endorcement, for howsoever the conclusion in the petition be, the endorcement may be alwaies as it shal please the King as mee seemeth, and according to that the partie must pursue it." This last sentence shows that Staundford did not regard the form of the fiat as depending upon the form of the prayer, but as being entirely within the King's discretion. He is mainly concerned with the question of venue, but his statement is wide enough to cover any sort of qualified fiat.

So Lord Somers, L.K., in *The Bankers' Case* (1690), 14 St. Tr. 1, 59, says: "The truth is, the manner of answering petitions to the person of the King was very various: which variety did sometimes arise from the conclusion of the party's petition; sometimes from the nature of the thing; and sometimes from favour to the person: and according as the indorsement was, the party was sent into Chancery or the other Courts. If the indorsement was general, 'soit droit fait al partie,' it must be delivered to the Chancellor of England . . . but

if the indorsement was special, then the proceeding was to be according to the indorsement in any other Court."

The question of fixing and altering the Court or venue by the fiat is discussed below, p. 380.

Practically equivalent to the grant of a qualified fiat is the course occasionally adopted by the Crown, whereby it grants the fiat absolutely, but at the same time warns the suppliant that the Crown will demur, and that, in the Crown's opinion, the petition must fail. That course was adopted, for instance, when the fiat was granted to the petition of right of the West Rand Central Gold Mining Co., Ltd. (reported on the trial in [1905] 2 K. B. 391; 74 L. J. K. B. 753), and in *Ryan v. R.* (1904), not reported, where an army nurse claimed compensation for loss of employment; see above, p. 357.

The Petition cannot be set down for Trial without the Fiat.

This, which indeed seems obvious from the terms of the Act and from the earlier practice, was decided in *In re Mitchell* (1896), 12 T. L. R. 324, 458. The suppliant moved that his petition of right might be set down for trial without receiving the fiat, alleging that it had been returned to him by the Home Office without being submitted to the Crown, on the ground that it was not a petition of right within the meaning of the Act, and that there was nothing to which the fiat could be affixed.

The Return of the Petition to the Suppliant.

If and when the fiat has been granted, the petition is returned to the suppliant, sealed with the seal of the Home Office, and with the fiat written upon it. If the fiat has not been granted, the petition is returned to the suppliant with an intimation to that effect. In neither case is any fee chargeable to the suppliant.

The Place of Trial.

Fixing the Venue before Fiat.

By sect. 1 of the Act, a petition of right, "if intituled in a Court of Common Law, shall state in the margin the venue for the trial of such petition." This is a specific provision as to petitions of right intituled in the King's Bench Division, and as to these overrides the provisions of Ord. XXXVI. r. 1, whereby the place of trial is to be fixed by the Court or a judge. The statement in the Annual Practice, 1908, note to Ord. LII. r. 16: "Place of trial is fixed by

the master, on summons," is incorrect. The master has no power to fix the place of trial of petitions of right in the King's Bench Division. It is true that in two recent instances orders purporting to fix the place of trial have been made on summons before the master, but in both cases the Crown did not contest the point, and it is submitted that it is clear from the Act that the master has no such power. The position of petitions of right intitled in the Chancery Division with regard to venue is different. There is no specific provision as to these in sect. 1 of the Act, because at the date of the Act Chancery matters could only be tried in London. The implication, perhaps, is that, under sect. 1 of the Act, suppliants in the Chancery Division are still confined to trial in London.

Fixing or Changing the Court or Venue by the Fiat.

There seems to be no reason to doubt that, in general, the venue can be changed by the Crown at the time when it grants its fiat to the petition. This rests upon the general principles enunciated above, namely, that the Crown may grant the fiat in such modified form as it chooses, and does not rest upon the doctrine that the Crown may sue and be sued where it chooses. That it may sue where it chooses is clear enough (see below, p. 581); that this prerogative extends to cases where the Crown is defendant is by no means so clear. The true doctrine seems to be that laid down by Clarke, M.R., in *Burgess v. Wheate* (1759), 1 Eden. 177, 189: "Though the Crown may insist on being sued in its own proper Court, yet it may sue in what Court it pleases." If this be so, the utmost the Crown could do, under this particular prerogative, would be to remove the petition of right to the Revenue side of the King's Bench Division. In addition, it would have the power to change the venue to any county under the Crown Suits Act, 1865, s. 46. (See below, pp. 582, 699.) But, in the author's opinion, the power to alter the venue rests, not upon this prerogative, but upon the other prerogative above stated. The provisions of the Naval Prize Act, 1864, s. 52 (see above, p. 347), do not throw any light on the matter, but sect. 2 of the Petitions of Right (Ireland) Act, 1873 (see below, p. 711), is distinctly in favour of this view, providing, as it does, that a petition may be, "if Her Majesty shall be pleased to grant her fiat *to that effect*," prosecuted in an Irish Court.

There is no doubt that before the Petitions of Right Act of 1860 the Crown had power to send a petition for trial wherever it chose. This appears clearly from the passages from Staundford and *The Bankers' Case*, cited above, p. 378. It is also clear from *In re Pering* (1837), 2 M. & W. 873; 6 L. J. Ex. 253. In that case the Court of

Exchequer held that they had no power to proceed to hear a petition of right, which had received a general endorsement, "Let right be done" only, but that it was necessary that the petition should be endorsed specially to be tried by themselves, even though the prayer of the petition was that the petition should be referred to the Exchequer for trial. The Court assumed that the Crown could refer the petition, by its fiat, to any Court it chose; and it appears to the author that there is nothing in the Petitions of Right Act, 1860, to modify this prerogative. It merely provides that the suppliant must state the venue selected by him in his petition, but that surely must be taken to be merely a suggestion to the Crown, and not as in any way limiting the prerogative of the Crown to fiat the petition in such form, whether as to place of trial or otherwise, as it chooses.

The very difficult question here arises whether the Crown can grant its fiat in the form that the petition shall be tried elsewhere than in England or Ireland. Clearly the machinery of the Petitions of Right Act, 1860, is only intended for trials in England; hence the Petitions of Right (Ireland) Act, 1873, which was passed for the purpose of extending that machinery to Ireland. But it is equally clear that these Acts did not affect the prerogative, except so far as they specifically did so, and that they preserved the old practice, while supplying a less cumbrous alternative. Under the old practice the passages already cited show that there was no limitation suggested to the power of the Crown to send a petition of right to any Court at will, though, of course, the question of granting a fiat for a trial abroad was probably not present to the minds of the writers.

The author, therefore, is of opinion that a fiat could be granted for trial in any British Court anywhere, but subject to these suggested qualifications: (a) The matter must be one which would be within the jurisdiction of the local Courts, if it were a suit between subject and subject. The Crown has constitutionally erected the local Courts with certain jurisdiction, and it would not be competent for it, by a prerogative act, to extend or affect that jurisdiction. (b) The fiat ordering the trial must not conflict with any local law with regard to actions against the Crown or Government. If the matter were one which could be dealt with by an action or other proceedings against the local Government under the local law, it would not be competent for the Crown, by its fiat, to substitute another process for the process so provided by the local law. (c) The matter must be such that the judgment, if in favour of the suppliant, would be satisfied out of the imperial and not out of the local revenues. For cognate discussions as to petitions of right in England on claims arising abroad, see above, pp. 340, 360. It is true that no machinery exists for such a

proceeding, but it would be the duty of the Court, to which the petition was sent, to supply the machinery.

The author is, however, quite aware that there is very high, though not judicial, authority against this view, and that the Crown has refused in at least two recent instances to grant the fiat for trial abroad, though in one case in recent times a fiat is said to have changed the suppliants' venue at Liverpool into a venue in the Royal Court of Jersey. One of the petitions to which a fiat for trial abroad was refused was a claim against the Imperial Government; the other concerned land situated abroad and was not entitled in an English Court at all. Probably, rightly or wrongly, the Crown will continue to refuse to fiat petitions of right for trial abroad, and, whether it does or does not, its discretion cannot be questioned. Should it grant such a fiat, it is difficult to see how the Court, to whom the petition was referred, could refuse to consider it, if it complied with the conditions already suggested.

Change of the Court or Venue after Fiat.

By sect. 3 of the Act a petition of right is to be prosecuted in the Court in which it is entitled, or in such other Court as the Lord Chancellor directs, and sect. 4 provides that it shall be lawful for the Lord Chancellor, on the application of the Attorney-General or of the suppliant, to change the Court in which the petition shall be prosecuted, or the venue for the trial of the same. So under the Naval Prize Act, 1864, s. 52 (see above, p. 347), the Lord Chancellor may transfer a petition of right to the Probate, Divorce and Admiralty Division; and, for the purposes of petitions of right in the Irish Courts, the Lord Chancellor of Ireland is substituted for the Lord Chancellor of Great Britain by the Petitions of Right (Ireland) Act, 1873, ss. 2, 6.

It is submitted that sect. 3 of the Petitions of Right Act, 1860, is not intended to give the Lord Chancellor an absolute power to direct the petition to be tried in any Court, but that it is merely intended to refer to sect. 4, which permits him to do so only on the application of the Attorney-General or the suppliant. It is to be noted that no power to apply is given to a third party.

It is a difficult question how far the general power of changing the venue given to the Crown by sect. 46 of the Crown Suits Act, 1865, and which undoubtedly extends to petitions of right, is affected by these provisions of the Petitions of Right Act, 1860, and also how far the Crown's prerogative of moving suits affecting itself into the Exchequer, now the Revenue side of the King's Bench Division, is affected. (See the article on venue, below, p. 581.) Whether the

Crown retains these powers unimpaired in respect of petitions of right or not, and probably it does, it would seem clear that they must be exercised by means of the machinery here provided, namely, by application to the Lord Chancellor. But a petition of right for the recovery of duties paid, intituled in the King's Bench Division, can be and is taken on the Revenue side as part of the Revenue paper without any such formality.

The power here conferred upon the Lord Chancellor appears to have been given to him as such, and therefore not to have passed from him by any of the provisions of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66). (See *In re Pollard* (1888), 20 Q. B. D. 656; 57 L. J. Q. B. 273.) The question arose in the case of *Broadbent & Co. v. R.* (1900), not reported. The Crown desired the venue to be changed from Leicester to Middlesex, and thought it right to proceed under sect. 4 of the Act. With the consent of the suppliants, and after communicating with the Clerk of the Crown in Chancery, the Attorney-General presented a petition to the Lord Chancellor accompanied by a copy of the petition of right and a written consent signed by the suppliants' solicitors and the Principal of the Treasury Solicitor's Department, Law Courts Branch. The procedure followed was similar to that suggested by James, L.J., in 1875, as recorded in 1 Ch. D. 41.

A copy of the consent and the petition will be found below, p. 415.

The Filing of the Petition.

There is no provision in the Act as to filing, and no Rules have been made as to petitions of right in the King's Bench Division, but by Chancery Rule 1 of 1862 (see below, p. 804), as amended by the existing practice, upon the fiat being obtained to a petition entitled in the Chancery Division, the petition, with the fiat thereon, together with a printed copy of the petition and fiat (if the petition is in writing), is to be filed in the Writ, Appearance and Judgment Department of the Central Office (Rooms 68, 69). An impressed stamp of the value of 1*l.* is required for the petition, and is impressed on the petition where practicable; otherwise it is impressed on a præcipe to be filed. The same course is pursued with regard to petitions of right entitled in the King's Bench Division. (See Annual Practice, note to Ord. LII. r. 16; and Practice Masters' Rule 15.)

A petition entitled in the Chancery Division will be assigned to a judge by ballot in the usual way. Chancery Rule 2 (below, p. 804) is superseded by the more modern practice.

The Delivery of the Petition to the Treasury Solicitor.

Upon His Majesty's fiat being obtained, a copy of the petition and fiat must, by sect. 3 of the Act, be left at the office of the Solicitor to the Treasury, which is situate at Treasury Chambers, Whitehall, London, S.W., with an endorsement thereon in the form or to the effect of that in the Schedule (No. 2) to the Act (below, p. 691), praying for a plea or answer on behalf of His Majesty within twenty-eight days. Such copy must be a printed copy sealed at the Central Office (Chancery Rule 3 (below, p. 804), which has been adopted also for petitions in the King's Bench Division; see Annual Practice, note to Ord. LII. r. 16). It is then the duty of the Treasury Solicitor under the Act to transmit the petition to the particular Department to which the subject matter of the petition relates. Where such Department has a separate solicitor, as in the case of the Inland Revenue, the Customs, the India Office, the Post Office, the Board of Trade, and the Commissioners of Woods and Forests, the petition and the papers are handed over, and the Treasury Solicitor does nothing more in the matter; in the case of the other Departments, among which are the Treasury, the War Office, the Admiralty, the Colonial Office, the Foreign Office, the Home Office, the Board of Education, and the Commissioners of Woods and Forests, he transmits the petition and papers to the Treasury Solicitor's Department (Law Courts Branch) Room 276, Royal Courts of Justice, Strand, W.C., from which the future proceedings are conducted, with the help of the Department concerned.

It is not quite clear what course should be pursued where a petition of right relates to the affairs of a Department, such as the Local Government Board, which sends its litigious work to a private firm of solicitors. Probably the Treasury Solicitor would consult the desire of the Department.

If a petition of right were lodged affecting His Majesty in his private capacity, as is contemplated by the Act, sects. 11, 13, 14, the Treasury Solicitor, presumably, would continue to deal with it, unless, by His Majesty's direction, the proceedings were conducted by his private solicitor.

The Demurrer and the Answer and Plea.

Time for Pleading.

The time allowed for answering, pleading, or demurring on behalf of the Crown is twenty-eight days after the petition, endorsed with the prayer for a plea or answer, as set out in the Schedule (No. 2) to

the Act, has been left at the office of the Treasury Solicitor (sect. 4); that allowed to a third party is fourteen days from the service or leaving of the petition. (Sect. 5, see above, p. 370.) In both cases the time may be extended by the Court or a judge. The words "the Court or a judge," if they occurred in the Rules of the Supreme Court, would include a master in the King's Bench Division and a registrar in the Probate, Divorce and Admiralty Division, by Ord. LIV. r. 12, and the present case does not fall within any of the exceptions enumerated in that Rule. But, by sect. 16 of the Act, "Court" means any Division of the High Court in which the petition is presented, and "judge" means a judge thereof. It seems probable to the author that this must be taken to override Ord. LIV. r. 12 (which otherwise would apply here, see below, p. 387), and that applications for extension of time should be made on summons to a judge in Chambers (see *Smeeton v. Collier* (1847), 1 Ex. 457; 17 L. J. Ex. 57; *In re B. or Bathe*, [1892] 1 Ch. 459, 463; 61 L. J. Ch. 446), and not to a master, as has been the usual practice.

Form of Pleading, Counter-claim and Set-off.

Numerous precedents will be found below at p. 401. A form of confession of a petition by the Attorney-General is given in Coke's Entries, 421 b.

Sect. 6 of the Act provides specifically that the petition may be answered by way of answer, plea, or demurrer in a Court of Equity, or in a Court of Common Law by way of plea or demurrer, or by both plea and demurrer, by and in the name of the Attorney-General on behalf of the Crown, or by or on behalf of any third party, in the same way as if the petition were a bill in equity, or as if it were a declaration in a personal action in a Court of Common Law; and that such and the same matter as would be sufficient ground of answer and defence in point of law or fact to the petition on behalf of the Crown may be alleged on behalf of any third party.

It seems pretty clear that this section (a) places the Crown under the necessity of pleading directly to the allegations in the petition, without the assistance of any preliminary inquisition finding the truth of the petition or the right of the suppliant; such inquisition was a part of the old practice on petition of right, and is expressly abolished by this section; (b) enables the third party to plead as much and as diversely as the Crown is permitted to plead by its prerogative. It is not so clear that the section, viewed in connection with sect. 7, (c) preserves the form of pleading by demurrer and plea, in spite of modern changes; (d) does not otherwise affect such prero-

gative in the matter of pleading as the Crown possessed at the time of the passing of the Act.

As to (c), the constant practice of the Crown in the case of petitions of right in the King's Bench Division, ever since the passing of the Act, has been to demur, if necessary, and to plead, in spite of the general abolition of demurrer, and such practice has been accepted by the Courts. The point was alluded to but not argued in *Northam Bridge Co. v. R.* (1887), 55 L. T. 759, as appears by the transcript of the shorthand notes in the author's possession, and Chitty, J., observed that the proper practice was probably that contended for by the Crown.

As to (d), the point is covered by the decision in *Tobin v. R.* (1864), 14 C. B. (N. S.) 505; 32 L. J. C. P. 216, which decided that the Crown may plead and demur or plead double to a petition of right, and, if it chooses, may make a general denial, subject to some undefined control on the part of the Court, if its plea is embarrassing.

This decision was followed in *R. v. Diplock* (1868), 19 L. T. 380, which, with other cases on the Crown's general prerogative in pleading, is discussed in Book VI. of this work, below, p. 561. See also p. 387, below, where sect. 7 is dealt with. Perhaps the true solution is that the form of pleading by demurrer and answer and plea should be retained, but that in the details of pleading, subject to the Crown's general prerogative, the ordinary practice should be followed.

The pleadings on a petition of right in the Chancery Division differ slightly in form from those employed on a petition of right in the King's Bench Division, as will be seen from the precedents below, p. 416, and, in addition, the practice has grown up of assimilating the Crown's pleadings to a defence in an ordinary action. The Crown occasionally has even counterclaimed (see the precedent below, p. 419). Treasury counsel on the Common Law side have always been of opinion that a counterclaim was beneath the dignity of the Crown, and that any counterclaim of the Crown must be made by information, which, if necessary, could be tried at the same time as the petition of right. If the Crown counterclaimed and the suppliant discontinued his petition, we should have remaining an ordinary action by the Attorney-General instead of an information, which would be most anomalous.

As to set-off, sect. 7 of the Act extends the current practice to petitions of right. (See *Rustomjee v. R.* (1876), 1 Q. B. D. 487, 491; 45 L. J. Q. B. 249, 253, per Lush, J.) In *De Lancey v. R.* (1871), L. R. 6 Ex. 286, 288; 40 L. J. Ex. 198, 200, Kelly, C.B., observed: "Under sect. 7 of 23 & 24 Vict. c. 34, the Crown is entitled to plead a set-off in answer to a petition of right. Here there is a plea

which, though not in a very precise or formal manner, claims a set-off; and it is not material to consider in what exact manner the right of the Crown arises, if the Crown is in fact entitled as against the petitioner to a sum equal to that which is sought to be recovered."

The Joinder in Demurrer, Replication and Rejoinder.

The suppliant and the Crown may respectively employ these pleadings, if they think well to do so. The suppliant is, however, usually content not to plead to the demurrer and the answer and plea, and, if he does, he usually replies merely, and does not also join in demurrer. Rejoinder on the part of the Crown is still less common, but it was employed by the Crown in *Mitchell v. R.*, [1896] 1 Q. B. 121, n.; 6 T. L. R. 181, 332, owing to the exceptional nature of the suppliant's replication.

Application of the Current Rules of Practice.

General Observations.

The Act, sect. 7, provides as follows: "So far as the same may be applicable, and except in so far as may be inconsistent with this Act, the laws and statutes in force as to pleading, evidence, hearing and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal and proceedings in error in suits in equity and personal actions between subject and subject, and the practice and course of procedure of the said Courts of law and equity respectively for the time being in reference to such suits and personal actions, shall, unless the Court in which the petition is prosecuted shall otherwise order, be applicable and apply and extend to such petition of right: provided always, that nothing in this statute shall be construed to give to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy before the passing of this Act."

Sect. 15 of the Act gave the judges power to make rules of practice for petitions of right, and a Chancery Order, dated Feb. 1, 1862, which is printed below, p. 804, was made in pursuance of that section, but the section was repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), s. 3 and Schedule, before any rules had been made as to practice on petitions of right on the Common Law side. By sect. 6 of the last-cited Act, the enactments relating to the making of Rules of Court contained in the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), and the Acts amending it, extend and apply to all matters with respect to which rules of procedure or general orders might have been made under any enactment repealed by the Act, and to all proceedings by or against the Crown. No special rules relating to petitions of right,

so far as concerns the matters specified in sect. 7, have been made under this power.

It is submitted that it is clear that, with regard to the points of practice specified in sect. 7, the rules of practice current for the time being, and not the rules of practice current at the time of the passing of the Petitions of Right Act, 1860, apply, subject to four things—(a) they must be applicable, having regard to the peculiar manner in which a petition of right is initiated; (b) they must not be inconsistent with anything in the Act of 1860; (c) they must not purport to give the suppliant any remedy against the Crown, to which he was not entitled before the passing of the Act of 1860; (d) they must not derogate from the prerogative, except in so far as the Act of 1860 justifies such derogation. It surely cannot have been intended by the Legislature to fix the procedure on petitions of right immutably at the point reached by the procedure between subject and subject on July 3, 1860, when the Act received the Royal Assent; the object was to assimilate the proceedings as nearly as possible to those between subject and subject, and surely it must have been intended that the two sets of proceedings should progress and be amended together, and not that the procedure on petitions of right should remain stationary, while the procedure in actions between subject and subject progressed; the result of that would have been that the assimilation would have been momentary only, and the object of the Act would only have been attained for an instant. This view is strongly supported by sect. 11, which clearly applies the procedure in force from time to time as to costs to petitions of right, and also by the provisions of the Naval Prize Act, 1864, s. 52 (see above, p. 347), which clearly contemplates that, as to petitions of right in Admiralty, the current practice for the time being shall apply. The same view seems to be taken with regard to petitions of right in Chancery by Chancery Rules 7 and 8, below, p. 805.

In *Tobin v. R.* (1863), 14 C. B. (N. S.) 505; 32 L. J. C. P. 216, Erle, C.J., said: "It is said that the 7th section of the 23 & 24 Vict. c. 34, is conclusive, and that the Legislature has thereby taken away to a certain extent the prerogative of the Crown, by subjecting the petition of right to all the ordinary rules of pleading. But I do not think that that conclusion is warranted by the language which the Legislature has used. The 2nd and 3rd sections, upon which we recently had so much discussion in the case of *Irwin v. Grey* [see above, p. 376], show that the prerogative of the Crown is retained. The 6th section, upon which some reliance has been placed, does not relate to the form of pleading, but merely takes away the inquisition on the petition of right. The 7th section, which relates to the mode of procedure, says that [he quoted the section] . . . Looking at the

nature of this petition, and at the vague statements contained in it, I am of opinion that the rules of procedure which govern the proceedings between subject and subject are wholly inapplicable, and that the Crown has a right to deny in general terms the truth of the whole of the statement which the suppliants rely on as constituting their claim of right." Willes, J., said: "I apprehend that when this question is closely looked at, it will be found that it was disposed of in the refusal of the rule on the ground that the prerogative of the Crown remains unaffected by the statute. At common law it is clear that the Crown was not precluded from pleading double, or pleading and demurring. I speak with the sanction of the highest authority when I say that the right of the Crown to plead double was unaffected by any of the statutes or rules of Court relating to pleading and procedure. And this applied not only to the proceedings on a petition of right, but also to the *monstrans de droit* and traverse of office. . . . That being so, then came Mr. Bovill's Act [the Petitions of Right Act, 1860], to amend the law relating to petitions of right, to simplify the proceedings, and to make provisions for costs." He then quoted sects. 6 and 7, and continued: "Now, the law with respect to double pleading has no reference to pleading by or on behalf of the Crown. Under this statute, a subject who is made party to a petition of right may plead and demur thereto by leave of the Court: but it is unnecessary for the Attorney-General to resort to the statute to enable him to do what the law enabled him to do before."

It will be seen that this decision puts the preservation of the Crown's prerogative on the broad ground that, as the prerogative does not rest on rules of procedure, but is outside and above them, alteration in rules of procedure does not *per se* affect the prerogative.

In *Tomline v. R.* (1879), 4 Ex. D. 252; 48 L. J. Ex. 453, Bramwell, L.J., says: "Sect. 7 of the Petitions of Right Act, 1860, provides that the existing and future practice of the Courts of law and equity as to procuring evidence in suits between subject and subject shall extend to petitions of right, subject to the qualification 'so far as the same may be applicable.'" He then decides that the Crown may obtain discovery in the ordinary way from the suppliant.

It is proposed to deal with the question of the Crown's prerogative in matters of practice hereafter in Book VI. of this work, and the reader is referred thereto. At present it is only intended to deal with certain points of practice which are specially affected by the Petitions of Right Act, 1860.

Summons for Directions.

A summons for directions under Ord. XXX. should not be taken out by the suppliant. The peculiar method in which a petition of

right is launched is inconsistent with it, and the time and manner of pleading is provided for by the Act. There is no discovery against the Crown. (See below, p. 598.) The place of trial cannot be fixed by a master or judge. (See above, p. 379.) If any interlocutory matter is required to be settled on behalf of the suppliant, the Crown, or the third party, it must be raised on summons before a master. Extension of time for pleading, however, must apparently be granted by a judge (see above, p. 385), and the venue can only be changed by the Lord Chancellor. (See above, p. 382.)

The Crown usually obtains an order for discovery against the suppliant by summons before a master, as in *Kerswill v. R.* (1905), not reported, in which case the suppliant's counter-summons for discovery was properly dismissed. Applications with respect to mode of trial (other than an application for a trial at bar, as to which, see below, p. 588) are made in the same way.

A third party, *semble*, could apply for discovery against the suppliant in this manner, and take out a summons for any other purpose not excluded by the Act.

Pleading and Amendment.

The form of pleading under the Act has already been discussed (above, pp. 373, 385), and the Crown's prerogative in this matter is further discussed below, p. 561.

Can a petition of right be amended? The Crown has granted its fiat to a particular petition, and it is obviously not within the subject's competence to amend it into something else without the Sovereign's leave, in spite of sect. 7 of the Act. Strictly, therefore, a fresh petition should be presented and a fresh fiat obtained.

In *Broadbent & Co. v. R.* (1900), not reported, the suppliants purported to amend their petition of right before it had been delivered to the Treasury Solicitor, under Practice Masters' Rule 13, as though it were a writ which had not been served. The Crown took out a summons to strike out the amendments, as made without authority, but ultimately an order was made by consent allowing the amendments; no fresh fiat was, however, obtained to the petition as amended. It is submitted that this procedure was wholly irregular.

In an early instance, *In re Viscount Canterbury* (1840), 1 Coop. t. Cott. 143, 146, we find an application by the suppliant to amend in accordance with admissions settled and signed by his counsel and the Attorney-General. The application was assented to by the Attorney-General and granted. It appears that the amendments were desired by the Crown in order that it might demur generally. (See the report in 1 Ph. 306, 307.) No mention is made of a fresh fiat.

Recently, in *Imperial Cold Storage Co., Ltd. v. R.* (1907), not

reported, the suppliants took out a summons before a master to amend their petition of right, which had received the fiat and been pleaded to by the Crown some two years before, but had not yet come to trial. The Crown opposed, and ultimately the petition as amended was re-lodged by the suppliants with the Home Secretary, in order that it might receive a fresh fiat, if His Majesty thought fit to grant it. The fresh fiat was not granted, inasmuch as the Act makes no provision for the payment to the Crown by the suppliant of the costs thrown away on the original petition under such circumstances. The suppliants were therefore compelled to withdraw their original petition, the Treasury agreeing, as a matter of grace, only to require the payment of so much of their costs as were thrown away on the original petition, and not of so much as had been expended on matters which would be available for the proceedings on the amended petition, when presented. The suppliants then presented their petition in its amended form *de novo*, and it received the fiat.

Suits in Formâ Pauperis.

The Chancery Order of 1862, Rules 5 and 6 (see below, p. 805), provide that any suppliant or third party on a petition of right may be admitted to prosecute or defend it, on a certificate of counsel that the case is proper for relief, in the same manner and subject to the same rules as if the proceeding were an ordinary suit. It is apprehended that Ord. XVI. rr. 22—31, as to paupers, also apply to petitions of right.

Evidence.

As to the general prerogative, see below, pp. 596, 598. Chancery Rule 4 (below, p. 804) provides that a suppliant desiring to file interrogatories for the examination of a third party shall file them at the same time as the petition, and a copy examined and marked at the Writ, Appearance and Judgment Department is to be served on the third party, together with a copy of the petition. No provision is made in Practice Masters' Rule 15 for the filing of such interrogatories, but presumably the Writ Department would receive them, if the matter ever arose. See generally Ords. XXXVII., XXXVIII.

The suppliant and the third party would seem to have rights of discovery against one another, to be exercised in the same manner as by parties to an ordinary action.

Special Case.

A special case under Ord. XXXIV. was stated in *Bushe v. R.* (1869), Times News. May 29; *Crossman v. R.* (1886), 18 Q. B. D. 256; 56 L. J. Q. B. 241; *Great Western Rail. Co. v. R.* (1889), 4 T. L. R. 383; 5 T. L. R. 714; *Stern v. R.*, [1896] 1 Q. B. 211; 65 L. J. Q. B. 240;

Hunter v. R., [1903] 1 K. B. 514; 72 L. J. K. B. 230; *Malkin v. R.*, [1906] 2 K. B. 886; 75 L. J. K. B. 884, in each case by consent.

In *Percival v. R.* (1864), 3 H. & C. 217; 33 L. J. Ex. 289, a case was stated by consent and judge's order, under the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 46.

Hearing and Trial.

The Crown's prerogative in these matters is dealt with below, p. 586.

A petition of right is entered and set down for trial or hearing in the same way as an ordinary action. An impressed stamp of 2*l.* is required. See generally Ord. XXXVI.

A petition of right is clearly a proceeding in which the Crown is entitled to a trial at bar. (See below, p. 587.) The most recent instance is *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391; 74 L. J. K. B. 753, though the reports do not state the fact.

The author was once of opinion that a demurrer to a petition of right should be tried by the Court *in banc* under the old practice, and that there was no need to demand a trial at bar in such a case; but it now appears to him that, though sect. 6 preserves demurrers, sect. 7 does away with the old method of trying them.

On cross-demurrers, apparently, the suppliant, and not the party first demurring, had the right to begin. (*Churchward v. R.* (1865), L. R. 1 Q. B. 173.)

The Crown usually raises any point of law, which disposes of the whole case, by demurrer, and it is usual to obtain a consent from the suppliant that such point of law shall be disposed of before the hearing of the issues of fact. A form of consent is printed below, p. 416. A recent instance is *Ryan v. R.* (1904); not reported, where judgment was given for the Crown on the demurrer, and that concluded the matter. In *West Rand Central Gold Mining Co. v. R.*, *ubi sup.*, the case was tried on the demurrer, and no answer and plea was ever delivered.

In *Eyre & Spottiswoode v. R.* (1887), 3 T. L. R. 5, 304, 447, on the other hand, the Crown did not demur, but raised two points of law as to the construction of the contract in question in their answer and plea. The Crown then took out a summons under Ord. XXV. r. 2, applying that one of these points should be disposed of before the other questions raised in the petition. The application was granted, and the point having been decided against the suppliants, the Court held that that concluded the case, and that the suppliants were not entitled to have the second point tried, as they were for certain reasons anxious that it should be. That this was the position appears from the transcript of the shorthand notes in the author's possession.

There seems to be no reason why the Crown should not so adopt the ordinary practice under Ord. XXV. r. 2, but the procedure by demurrer seems to be more succinct and satisfactory.

A petition of right cannot be referred without the Crown's consent. (Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 23.)

Security for Costs.

"The Petitions of Right Act, 1860, s. 7, incorporates the practice as to security for costs: this can apply only against the suppliant; the Crown cannot be called upon to give security for costs" (*Tomline v. R.* (1879), 4 Ex. D. 252, 254, per Bramwell, L.J.). See further as to the prerogative in this matter, below, p. 613.

Limitation of Time.

The general question of the limitation of time in the case of the Crown is discussed below, p. 566.

Rustomjee v. R. (1876), 1 Q. B. D. 487; 45 L. J. Q. B. 249, however, must be specially mentioned here, since it is a definite authority that the Limitation Act, 1623 (21 Jac. I. c. 16), does not apply to petitions of right. "The Statute of Limitations has relation only to actions between subject and subject, the Crown cannot be bound by it," at p. 491, per Blackburn, J., who adds on p. 496: "There seems to be no pretence of saying that the statute applies at all to the Crown. It would, no doubt, be very proper, and right, and judicious for the Legislature to pass an Act to say that in future some statute of limitation shall apply, but it has not been done yet," and on p. 492, Coleridge, C.J., says: "The Crown cannot be bound by Acts of Parliament which have relation only to the course of procedure between subject and subject." The point was not raised again by the Crown on appeal (2 Q. B. D. 69; 46 L. J. Q. B. 238). Text writers have objected to this decision, and the advisers of the Crown have also expressed dissatisfaction with it, apparently on the principle that the Crown can claim the benefit of any statute, in which it is not mentioned, although it is not adversely bound by it. But this criticism seems to rest on a misapprehension, at least so far as the decision applies to petitions of right. The Statute of James, s. 3, only applies to "actions," and a petition of right is not an "action." This seems to the author amply to justify the decision, and this interpretation of "action" seems to be completely supported by *A.-G. v. Donaldson* (1842), 10 M. & W. 117, 124; *R. v. Tuckin* (1705), 2 Ld. Raym. 1061, 1066; *A.-G. v. Allgood* (1743), Park. 1; *Baxter's Case* (1588), 3 Leon. 214; and *A.-G. v. Buckley* (1698), Park. 264.

A particular class of petitions of right, namely, those claiming the personal estate of a deceased person, are limited by the Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71), s. 3, which is printed below, p. 735.

The principle of the decision in *Rustomjee v. R.* will then, it seems, apply to any statute of limitation which limits "actions." Whether the Crown could pray in aid a statute of limitation, in which it was not named, but the terms of which were wide enough to cover proceedings by petition of right, will depend on the matters discussed below, p. 567.

Appeal.

Appeals on petitions of right follow precisely the same course as appeals in ordinary actions. Compare *Dixon v. R.* (1862), 11 W. R. 68, under the old practice in error.

The Judgment.

Judgment by Default.

By sect. 8 of the Act, in case of a failure on behalf of the Crown or by a third party to plead, answer, or demur in due time, either to the petition or at any subsequent stage of the proceedings thereon, the suppliant may apply to the Court or a judge for an order that the petition may be taken as confessed, and the Court or a judge, on being satisfied that there has been such failure, may order that the petition may be taken as confessed as against the Crown or the third party, and, in case of such default, a decree may be made by the Court, or leave may be given by the Court, on the application of the suppliant, to sign judgment in his favour. The decree or judgment may afterwards be set aside by the Court or a judge if, and on such terms as, they think fit.

In *Kerswill v. R.* (1905), not reported, the suppliant applied to the master by summons for leave to sign judgment under this section and served the summons on the Crown. On the Crown's objection that a master had no jurisdiction, which seems to the author to be a proper objection (see above, p. 385), the matter was transferred by the master to the judge in Chambers. The Crown did not otherwise object to the form of the application, but it will be observed that in *Kinloch v. R.*, [1882] W. N. 164; [1884] W. N. 80, such an application was made by motion. It was also suggested by counsel for the Crown in the proceedings in *Kerswill v. R.*, *ubi sup.*, that the suppliant ought first to have asked the Attorney-General for his plea, and to have been refused, before he proceeded to seek to sign judgment, according to *R. v. Musters* (1744), Park. 50. In *Kinloch v. R.*, *ubi sup.*, where the Crown had demurred in time, but the third party (the Secretary of State in Council of India) had not, the Court refused to allow the

suppliant to take the petition *pro confesso* as against the latter. It certainly would seem, regard being had to the terms of sect. 5 of the Act, that if a petition fails to establish the suppliant's right as against the Crown, it *ipso facto* fails to establish it against the third party, whose title stands or falls with the Crown's. But apparently the report of *Kinloch v. R.*, [1884] W. N. 80, is not quite correctly worded in saying that the Court can sign judgment only in the case of joint default in pleading being made by the Crown and the third party. If the suppliant obtained judgment against the Crown on the hearing, he could also get leave to sign judgment against the third party who had failed to plead.

In *Tobin v. R.* (1863), 14 C. B. (N. S.) 505; 32 L. J. C. P. 216, the suppliant took out a summons "to show cause why an order should not be made that the petition of right might be taken as confessed, there having been a failure on behalf of Her Majesty to plead or demur thereto in due time according to the practice and course of procedure in that case applicable, or why, if a plea and demurrer were to be deemed to have been duly delivered, the plea should not be struck out or amended, the same being so framed as to prejudice and embarrass the fair trial of the petition."

It may be pointed out to suppliants that it is not advisable to press the Crown too far, inasmuch as it is open to the Crown, if such time as it requires is not given to it, to plead merely a general denial, as was decided in the last-cited case, subject to some undefined control of the Court (see above, p. 386).

Form and Effect of the Judgment.

Upon every petition of right the decree or judgment of the Court, whether given upon demurrer upon the pleadings, or upon a default to answer or plead in time, or after hearing or verdict, or appeal, shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition or such other relief as the Court may think right, and the Court may give a decree or judgment that the suppliant is entitled to such relief, and upon such terms and conditions (if any) as the Court shall think just. (Sect. 9.)

In all cases in which the judgment commonly called a judgment of *amoveas manus* was pronounced or given upon a petition of right before the passing of the Act, a judgment that the suppliant is entitled to relief as provided in the preceding section shall be of the same effect as such judgment of *amoveas manus*. (Sect. 10.)

The effect of these two sections is to bring the judgment on a petition of right into line with the judgment against a subject, subject to the special method of enforcement provided later in the Act. Compare the forms of judgment printed below, pp. 416, 460. In the

earliest times the ordinary, and, in the opinion of some, the only judgment on a petition of right was an *ouster le main* or *amoveas manus*. The form was "that the hands of the Crown be amoved, and possession restored to the petitioners," whereby the King was immediately, by operation of law, out of possession (Chitty, Prerog. 348). Such a judgment primarily applied to land, but there seems to be no reason why it should not be applied to other hereditaments and to chattels, and it was in fact so applied. Staundford, Praerog. 77 b, speaks of the King's hands being amoved from "the thing he seized." He also adds that sometimes an *ouster le main* went to the King's patentee also, where the King had granted the thing seized to any other. The judgment simply bound the King to remove his hands, not to deliver possession, and then the victorious suppliant could go and take possession without being an intruder or trespasser.

But no doubt there are some matters, which are recognised to be proper subjects of petition of right, such as unliquidated damages, to which the old judgment of *ouster le main* is scarcely appropriate. Hence the wording of sects. 9 and 10 of the Act. They provide that where an *ouster le main* would formerly have been appropriate, the new form of judgment is to have the same effect, and in general that the suppliant is to be awarded such relief as the Court thinks fit.

There seems to be no difficulty with regard to the third party. Where, under the old practice, an *ouster le main* could have been granted against the King's patentee or grantee, the new form of judgment has the same effect, and, in general, the Court can award to the suppliant such relief as it thinks fit against the third party.

Certification and Satisfaction of the Judgment.

By sects. 13 and 14 of the Act, where a judgment, order, or decree has been given or made in the Court of first instance, or, if there be an appeal, has been affirmed, given, or made on appeal, that the suppliant is entitled to relief, or where there has been an order entitling the suppliant to costs, any one of the judges of the Court in which the petition has been prosecuted, shall and may, on the application of the suppliant, after the lapse of fourteen days from the judgment, order, or decree, certify to the Treasury in the one case, or to the Treasurer of His Majesty's Household, or such other person as the King shall from time to time appoint to receive the certificate, in the other, according as the petition was against the King in his public or in his private capacity, the tenour and purport of the same in the form provided in the Schedule (No. 5) to the Act or to the like effect. The certificate is to be sent to or left at the Treasury or at the office of the Treasurer of His Majesty's Household, as the case may be.

In the one case it shall be lawful for the Treasury, and the Act

requires them, to pay any money and costs to which the judge has certified the suppliant to be entitled, as already mentioned, out of any moneys in their hands for the time being legally applicable thereto, or which may be voted by Parliament for that purpose. In the other case, the amount to which the suppliant is entitled is to be paid to him out of such funds or moneys as the King is pleased to direct to be applied for that purpose. The distinction between the public and private capacity of the King in this matter is discussed above, p. 368.

It would seem to be for the judge, who gives the certificate, and not for the suppliant, to say whether the certificate is to go to the Treasury or to the Treasurer of the Household, and to frame his certificate accordingly.

It will be the duty of the Treasury, in cases in which the certificate is sent to them, to see that the suppliant is paid, and to communicate with the Department which controls the funds, out of which the judgment ought to be satisfied. No provision is made for judgments involving the restoration of lands or other specific hereditaments or chattels, because the judgment has the effect of a judgment of *ouster le main*, and the Crown is thereby put out of possession. It would seem to be the duty of the Treasury primarily, with the assistance of the Department concerned, to see that the suppliant is enabled to reap the fruits of his judgment without difficulty.

If the Treasury failed to pay the amount of the certified judgment and costs, which they are, by sect. 14, under a statutory duty to pay, probably a mandamus would lie to compel them to do so. (See above, p. 112.)

In practice, however, the certificate is not applied for by the suppliant, and it is customary for the Treasury to pay the amount of the judgment and taxed costs on the judgment alone without any certificate. *Quære*, whether they ought to do so.

Costs.

The Act, by sect. 11, provides that on any petition of right under the Act, the Attorney-General, or other person appearing on behalf of the Crown, and also any third party, are entitled respectively to recover costs against the suppliant in the same manner, and subject to the same restrictions and discretion, and under the same rules, so far as they are applicable, as are or may be usually adopted or in force touching the payment or receipt of costs in proceedings between subject and subject. For the recovery of such costs the Crown and any third party shall and may have the same remedies and writs of execution as are authorised for that purpose in an ordinary

action. Costs recovered on behalf of the Crown are to be paid into the Exchequer, and form part of the Consolidated Fund, or are to be paid to the Treasurer of the King's Household, or such other person as the King appoints to receive them, according as the petition is to the King in his public or in his private capacity.

In *Owens v. R.*, [1900] 2 I. R. 513, O'Brien, C.J., wished to deprive the Crown, which had succeeded, of its costs, on the ground that the fault lay with the officials of the Crown; but the majority of the Court did not agree with him.

Similarly, by sect. 12, the suppliant is entitled to costs against the Crown and against any third party, as in an ordinary action, so far as the ordinary rules are applicable. For the recovery of costs against a third party he is to have all the ordinary remedies.

For the recovery of costs against the Crown he proceeds in the same way as for the recovery of other sums due to him from the Crown under the judgment, as described above, p. 396.

The provisions of these sections abolish, so far as petitions of right are concerned, the well-known prerogative of the Crown with respect to the non-payment of costs. This prerogative is fully discussed below, p. 613.

Quære, whether these provisions prevent the Crown from exercising against the suppliant such prerogative remedies as it possesses for the recovery of Crown debts. (See above, pp. 172, 189.) The author thinks that they probably do not, and that they merely enable the Crown to proceed by an ordinary execution if it so desires. In the case in 1877 of *Cowing* and others, who had presented what was taken to be a petition of right, though it was couched in a most irregular form, the Crown, after issuing a *fi. fa.* for costs awarded to it on the petition, proceeded by writ of extent (*R. v. Cowing* (1877), not reported), and had two of the defendants arrested. A rule was obtained against the Crown to show cause why the writ of extent should not be set aside and the defendants released, on the ground that the Crown no longer had this prerogative remedy for the recovery of costs under a petition of right (see the form above, p. 278). The Home Secretary, in response to pressure, released the prisoners, and the Attorney-General, instead of insisting that the rule should be withdrawn, allowed it to be made absolute. On this, in *Cowing v. Hare* (1878), not reported, the two defendants who had been arrested claimed damages for wrongful imprisonment against the solicitors acting for the Crown. The point now under discussion was mentioned in the course of the argument, but the case was decided on another ground, and no judgment was given on the question.

CHAPTER V.

PETITION OF RIGHT IN IRELAND.

THE Petitions of Right (Ireland) Act, 1873 (36 & 37 Vict. c. 69), recites that it is expedient to make provision for the trial of petitions of right in Ireland in the same manner as in England. The Act will be found printed *in extenso* below, at p. 711. It gives power (sect. 2) to the suppliant to entitle his petition in the King's Bench or Chancery Division of the Supreme Court of Judicature in Ireland, namely, where the subject-matter of the petition, or any material part thereof, would have been cognisable if it had been a matter in dispute between subject and subject. If the Crown grants the fiat to that effect, the petition may be prosecuted in the Court in which it is entitled, or in such other Court as the Lord Chancellor of Ireland directs. In other respects the proceedings are to be the same as those provided for by the English Act, and (sect. 6) the forms of petition and the other forms prescribed by the English Act are to apply, with such alterations and additions as may show that such petition is entitled, and such proceedings had, in the Irish Court. The English Act is to be construed accordingly.

The petition must contain an averment (sect. 3) that the subject matter of the petition or a material part thereof arose in Ireland. Such averment is a material and necessary statement in the case of the suppliant, and a traverse of such averment shall be deemed to be a sufficient pleading in bar of the suppliant's right to relief.

It should be observed that there is nothing in this Act to prevent a petition of right being presented and proceeded with in England in respect of an Irish cause of action, if the Crown sees fit to grant the fiat. All the statute does is to provide a method by which petitions of right, in Irish matters only, may be tried in the Irish Courts.

After the fiat has been obtained (sect. 4), a copy of the petition and fiat must be left within twenty-eight days with the Crown and Treasury Solicitor for Ireland indorsed with a request for a plea or answer on behalf of the Crown, as provided in sect. 3 of the English Act. Failing compliance with this provision, no further proceedings shall be taken or had upon the petition.

Sect. 5 of the Act confers upon the judges of the Supreme Court the power of making rules and orders conferred by sect. 15 of the English Act. The last-mentioned section was repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), s. 3 and Schedule, and the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), was, by sect. 6, applied to the making of rules and orders with regard to petitions of right. It is apprehended that this does not affect sect. 5 of the Irish Act, and that the Irish judges have still power, in the terms of sect. 15 of the English Act, to make rules and orders with regard to petitions of right. They have not hitherto exercised that power.

APPENDIX OF PRECEDENTS.

PART I.

Petition of Right in the King's Bench Division.

Pleadings on a Petition of Right for Damages for Breach of Contract.

IN THE HIGH COURT OF JUSTICE.
King's Bench Division.

Edward R. & I.
"Let Right be Done."

TO THE KING'S MOST EXCELLENT MAJESTY.

to wit. } The humble Petition of A. B. of and C. D. of by
 } E. F. their Solicitor of

Sheweth that—

1. Your Suppliants are Printers carrying on business under the style or firm of B. and D.

2. On or about the day^o of it was mutually agreed by and between Your Suppliants and G. H. the Controllor of Your Majesty's Stationery Office as a servant of and on behalf of Your Majesty that Your Suppliants should print and the said G. H. should employ them to print certain books and papers for Your Majesty's Government on the terms and conditions contained in a Memorandum of Agreement of the date above mentioned to which Your Suppliants crave leave to refer as if the same were herein fully set out.

3. On or about the day of the said G. H. as a servant of and on behalf of Your Majesty informed Your Suppliants that he should thereafter refuse to employ Your Suppliants to print for Your Majesty's Government such books and papers as he considered to be of a confidential character and he still refuses so to employ Your Suppliants and has since the said date employed other persons to print such books and papers.

4. The printing of such books and papers was part of the work stipulated to be performed by Your Suppliants under the said Memorandum of Agreement of the day of and Your Suppliants have at all times been ready and willing to execute all such printing and all such conditions precedent have at all times been fulfilled as were necessary to entitle Your Suppliants to be employed to execute all such printing and Your Suppliants have not at any time broken any of the conditions of the said Memorandum of Agreement.

5. By reason of the premises and of the refusal by the said G. H. as a servant of and on behalf of Your Majesty to employ Your Suppliants to execute such printing as aforesaid Your Suppliants have been prevented from

earning the profits which they otherwise would have earned under the said contract and have thereby sustained damages to the amount of 5,000*l*.

Your Suppliants therefore humbly pray that Your Majesty will be pleased to do what is right and just in the premises and cause Your Suppliants to be re-imburshed and compensated for the damages so sustained by them as aforesaid.

(Signed) E. F.

Solicitor for the said A. B. and C. D.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of A. B. and C. D.

ANSWER AND PLEA

By His Majesty's Attorney-General, for and on behalf of Our Lord the King.

Delivered this day of by the Solicitor for the Affairs of His Majesty's Treasury (Law Courts Branch), 276, Royal Courts of Justice in the County of London.

Sir J. L. W., Knight, His Majesty's Attorney-General, on behalf of Our Lord the King, gives the Court here to understand and be informed as follows:—

1. The Attorney-General denies that the Contract was to the effect stated in the Petition.

2. The said Contract was entered into in and was on the following terms [*contracts and supplemental agreements set out*].

3. The Attorney-General says that under the above-mentioned Contracts and Supplemental Agreements the Suppliants were not entitled to be employed to print the books or papers or to execute the printing referred to in the Suppliants' Petition or any books papers or printing except such as might be required or ordered by the Controller of the Stationery Office in his discretion and the said Controller was not bound to require or order of the Suppliants the execution of the printing referred to in the said Petition or any printing and the Suppliants are not by reason of the matters alleged by them entitled to any compensation damages remedy or relief.

4. In or about a work or portion of a work printed for the Government within the meaning of the 2nd Article of the first-mentioned Contract came into other hands than those entitled to receive the same and thereupon the said Controller removed from the Suppliants as he lawfully might certain portions of the printing which he considered to be of a confidential description which are the matters complained of by the Suppliants.

5. After questions had arisen as to the said breach the said Controller determined and awarded that the said Contracts had not been performed satisfactorily and that certain work or a portion thereof had come into other hands than those entitled to receive the same and thereupon the Controller removed from the Suppliants as he lawfully might certain portions of the printing which he considered to be of a confidential description which are the matters complained of by the Suppliants.

6. The said Attorney-General on behalf of His Majesty further gives the Court here to understand and be informed that save as aforesaid the several

averments and statements contained in the said Petition of Right are not nor is any of them true in fact.

(Signed by the Junior Counsel to the Treasury.)

REPLY

of the above-named Suppliants.

Delivered

1. The above-named Suppliants humbly take issue on the Answer and Plea of His Majesty's Attorney-General.

2. Further to the 5th paragraph thereof they humbly say that if the said Controller determined or awarded as alleged (which is denied) he did so without hearing the Suppliants or affording them a reasonable or any opportunity of being heard upon the question in dispute.

(Signed by Counsel for the Suppliants.)

Pleadings on a Petition of Right of Assignees for Damages under a Contract.

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.

Victoria R.
"Let Right be Done."

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

Place of Trial—	}	The Humble Petition of A. B.	of	by their Attorneys
To wit.		Messrs. C. D. of	Agents for Messrs. E. F. of	

Sheweth that—

1. Your Suppliants are builders' merchants and slaters carrying on their business at X.

2. In or about the year 1898 Messrs. G. H. a firm of builders and contractors carrying on business at Y. entered into a contract with the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland hereinafter called the Admiralty to erect a new Coastguard Station at Z. and carry out the whole of the work connected therewith. At all material times your Suppliants were not aware and had no notice of the terms of such contract.

3. By a contract in writing (to which your Suppliants crave leave to refer) dated the 26th day of July 1898 and made by and between your Suppliants and the said firm of Messrs. G. H. your Suppliants agreed to do with your Suppliants' own slates and other materials the slating work required under the said contract between the said firm and the Admiralty amounting to about 80 squares—more or less—at a price of 38s. per square.

4. At all material times your Majesty's said Board were aware of the said last-mentioned contract and of the terms thereof and of the said slating work being carried out as hereinafter appears by your Suppliants and the Admiralty acquiesced in and permitted the execution of such work by your Suppliants.

5. Your Suppliants thereafter duly carried out part of the said slating work amounting in all to about 41 squares and were at all times ready and willing to carry out the whole of the said slating work if the said firm of Messrs. G. H. had performed their part of the contract made as aforesaid with your Suppliants

but the said firm in breach of the said contract failed to make payment to your Suppliants for the said slating work as agreed and on or about the 18th day of March 1899 your Suppliants obtained judgment for £50 and costs against the said firm of Messrs. G. H. in an Action intituled "1899. B. No. 65." brought in the Queen's Bench Division of the High Court of Justice to recover moneys owing to your Suppliants by the said firm in respect of part of the said slating work.

6. The said firm being at the time of the said judgment in financial difficulties and unable to pay the said judgment debt and costs forthwith arrangements were thereupon made between your Suppliants and the said firm for your Suppliants to wait until the said firm received the next payment from the Admiralty for the payment of the said debt and costs and in consideration of the time so given to them for payment the said firm agreed (as the Admiralty well knew) to release your Suppliants from the obligation to proceed with the said slating work under their said contract and further agreed to purchase and take over at a reasonable price—to be fixed thereafter by mutual agreement—the slates and other materials (hereinafter particularly specified) the property of your Suppliants which were then lying at or near to the site of the said Coastguard Station having been forwarded there by your Suppliants for use by them in the further execution of the said slating work.

7. The said firm did not however purchase or take over from your Suppliants the said slates and other materials as agreed or at all and no price therefor was fixed or paid and the said slates and other materials remained the property of your Suppliants inasmuch as in or about the month of April 1899 the said firm became bankrupt and the Admiralty being unable to arrange terms for the completion of the said Coastguard Station with the trustee in bankruptcy of the said firm decided to complete and did in fact complete the said Coastguard Station and the said slating work themselves.

8. Without the permission or assent of your Suppliants the Admiralty have taken possession of the said slates and other materials the property of your Suppliants and used them in and about the completion of the said work though they well knew and had express notice orally and in writing that such were the sole property of your Suppliants and have since refused and still refuse to pay your Suppliants the value thereof viz. £64: 3s. 6d. or any sum at all.

Particulars are as follows:—

Your Suppliants claim under paragraphs 7 and 8 the return of the said slates and other materials or £64: 3s. 6d. their value.

9. Alternatively the Admiralty were permitted by your Suppliants to take possession of the said slates and other materials the property of your Suppliants ^{and} _{or} to use the same in or about the completion of the said work as aforesaid and are liable on an implied contract to pay your Suppliants a fair and reasonable sum therefor viz. £64: 3s. 6d. but have refused and still refuse to pay your Suppliants the said or any sum at all in respect thereof.

Your Suppliants therefore humbly pray that your Majesty may be graciously pleased to direct this petition to be indorsed with your Majesty's fiat that right be done.

Dated the day of 1900.

(Signed) K. L.

Counsel for Messrs. A. B.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

In the Matter of the Petition of Right of Messrs. A. B.

DEMURRER, ANSWER AND PLEA

To the said Petition by Her Majesty's Attorney-General for and on behalf of our Lady the Queen delivered the day of 1900 by the Treasury Solicitor (Law Courts Branch) 276, Royal Courts of Justice in the County of London.

DEMURRER.

Sir Robert Bannatyne Finlay Her Majesty's Attorney-General on behalf of our Lady the Queen gives the Court here to understand and be informed that the Petition of Right is bad in substance and in law on the ground that as appears from the allegations contained in the said petition the said slates were not at the date of the acts complained of the property of the Suppliants and on the further ground that no Petition of Right which complained of a wrongful or tortious act by the servants of the Crown can be maintained.

ANSWER AND PLEA.

And Sir Robert Bannatyne Finlay Attorney-General on behalf of our Lady the Queen gives the Court here to understand and be informed as follows:—

1. In the year 1898 Messrs. G. H. a firm of builders and contractors carrying on business at Y. entered into a contract with the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland hereinafter called the Admiralty to erect a new Coastguard Station at Z. and carry out the whole of the work connected therewith themselves.

2. It was a term of the said contract that neither the contract itself nor any part share or interest in it should be transferred or assigned by the contractors directly or indirectly to any person or persons whomsoever without the written consent of the Admiralty. No such written consent was ever given by the Admiralty.

3. There was also a term of the said contract in the following words:—"All the materials delivered for the execution of the works, and placed on the site or sites for the same, shall thereupon become and be the absolute property of the Lords Commissioners of the Admiralty, subject nevertheless to the right of the said Director of Works or Superintending Officer of rejecting the same, under the third clause of this contract, and shall not be removable from the said site or sites of the said intended works without the previous consent, in writing, of the said Director of Works; but whenever the said works are finally completed, then all the materials which remain unused upon the said site or sites shall be forthwith removed by the said contractor, and upon such removal the same shall revert in, and become the property of, the said contractor."

4. The Suppliants had notice of the said contract yet notwithstanding the said contract they entered into the agreement mentioned in the 3rd paragraph of the Suppliants' petition and sent the slates mentioned in the said petition on to the site and thereupon the said slates became the property of the Admiralty.

5. The Attorney-General further gives the Court here to understand and be informed that afterwards that is to say on or about the day of

1900 the Suppliants sold to the said Messrs. G. H. the said slates which were then upon the site of the said coastguard station.

6. The Admiralty have since the date of the delivery of the said slates upon the site and since the date of the said sale used the said slates for the purpose for which the same were intended that is to say for the purpose of slating the said Coastguard Station, and in accordance with the said contract have paid the said Messrs. G. H. for the same.

7. The Attorney-General gives the Court here to understand and be informed that in the circumstances hereinbefore appearing the said slates were not the property of the Suppliants.

8. The Attorney-General further gives the Court here to understand and be informed that save as aforesaid the several allegations contained in the Suppliants' petition are untrue in substance and in fact.

(Signed by the Junior Counsel to the Admiralty.)

Pleadings on a Petition of Right for Demurrage under a Charter-party.

IN THE HIGH COURT OF JUSTICE.
King's Bench Division.

Edward R.
"Let Right be Done."

TO THE KING'S MOST EXCELLENT MAJESTY.

Middlesex To wit.	}	The Humble Petition of Frank Yeoman, of 4, Victoria Terrace, West Hartlepool, by John James Dumville Botterell, his Solicitor, of 101, Leadenhall Street, in the City of London,
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Sheweth that—

1. Your Petitioner [*"Suppliant" is the right term*] is part owner and managing owner of the steamship "*Haslingden*," and petitions as well on his own behalf as on behalf of all other his co-owners of the said steamship.

2. On June 6th, 1901, by a Charter-party of that date, it was mutually agreed between your Petitioner and the Director of Transports for and on behalf of the Lords Commissioners of the Admiralty thereafter called the Charterers, that in consideration of certain freight the said steamship should, after loading a cargo of patent fuel in Cardiff proceed therewith to Bermuda and there deliver the same.

3. The said Charter-party contained provisions to the following effect:—

(a) The cargo shall be discharged at the average rate of not less than 210 tons per working day, weather permitting; the time to commence in accordance with the custom of the Port; Sundays and all holidays and time lost through strikes or lock-outs of workmen, accidents, frosts, floods, rains, winds, rollers or any cause whatever beyond the control of the consignee of the cargo, not to count as discharging time.

(b) Demurrage to be paid at the rate of Fourpence per net register ton per day and *pro rata* employed beyond the time allowed for discharging.

4. Your Petitioner craves leave to refer to the said Charter-party for the full and exact terms thereof.

5. The said steamship loaded at Cardiff and delivered at Bermuda 2,367 tons of cargo.

6. Adopting the estimate of the said Charterers the time for discharging commenced on Monday, July 15th, 1901.

7. At the stipulated average rate of not less than 210 tons per working day, the time for discharging was 11 days and 6 hours, or $11\frac{1}{4}$ days, and not 12 days as is contended by the Charterers.

8. The discharge was not in fact finished until 3 p.m. on Monday, July 29th, making 13 days 15 hours of time to count.

9. The Charterers have admitted and paid your Petitioner in respect of 1 day and 15 hours demurrage, but there is still due and owing to your Petitioner the sum of £15 : 5s. 0d. in respect of the further period of 18 hours or $\frac{3}{4}$ of a day, during which the said steamship was on demurrage.

Your Petitioner therefore humbly prays for payment of the said sum of £15 : 5s. 0d.

Dated the 10th day of July, 1902.

(Signed)

Counsel for the Petitioner.

IN THE HIGH COURT OF JUSTICE.
King's Bench Division.

In the Matter of the Petition of Right of Francis Yeoman.

DEMURRER, ANSWER AND PLEA

To the said Petition by His Majesty's Attorney-General for and on behalf of Our Lord the King delivered the 19th day of December 1902 by the Treasury Solicitor 276 Royal Courts of Justice in the County of London.

DEMURRER.

Sir Robert Bannatyne Finlay Knight His Majesty's Attorney-General on behalf of Our Lord the King gives the Court here to understand and be informed that the Petition of Right is bad in substance and in law on the ground that the allegations of fact contained in paragraphs 3 and 5 of the said Petition do not disclose any right in the Petitioner to recover the sum of £15 : 5s. or any other sum for demurrage.

ANSWER AND PLEA.

And Sir Robert Bannatyne Finlay Knight His Majesty's Attorney-General on behalf of Our Lord the King gives the Court here to understand and be informed as follows:—

1. By a Charter Party dated June 6th 1901 and made between the Petitioner and the Director of Transports for and on behalf of the Lords Commissioners of the Admiralty thereafter called the Charterers it was mutually agreed that in consideration of freight to be paid by the said Charterers as therein provided the steamship "Haslingden" should proceed to Cardiff and there load a cargo of patent fuel and being so loaded proceed to Bermuda and deliver the same.

2. It was a term of the said Charter Party that the said cargo should be discharged at the average rate of not less than two hundred and ten tons per working day. The clause providing for rate of discharge contained no reference to fractions of a working day.

3. It was also a term of the said Charter Party that demurrage should be paid at the rate of fourpence per net register ton per day and *pro rata* employed beyond the time allowed for discharging. The clause dealing with demurrage thus provided for proportionate payment for fractions of a day.

4. The first working day for discharging the said cargo was Monday July 15th 1901. The amount of the said cargo was 2367 tons and the last lay day was Saturday July 27th. The discharging was completed at 3 p.m. on Monday July 29th.

5. In accordance with the terms of the said Charter Party the said Charterers have paid to the Petitioner demurrage at the rate of fourpence per net register ton per day and *pro rata* employed beyond the time allowed for discharging viz. demurrage in respect of the time commencing at midnight on Saturday July 27th and ending at 3 p.m. on Monday July 29th 1901 that is to say 1 day and 15 hours and there is no further sum due and owing to the Petitioner as alleged or at all.

6. The Attorney-General further gives the Court here to understand and be informed that save as aforesaid the several allegations contained in the said Petition are untrue in substance and in fact.

(Signed by the Junior Counsel to the Admiralty.)

Yeoman v. R., [1904] 2 K. B. 429; 73 L. J. K. B. 904.

Pleadings on a Petition of Right claiming the Repayment of Light Dues.

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.

Victoria R.
"Let Right be Done."

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The humble Petition of the Peninsular and Oriental Steam Navigation Company, of 122, Leadenhall Street, in the City of London, by William Dawes Freshfield, of New Bank Buildings, 31, Old Jewry, in the City of London, their Attorney,

Sheweth—

1. That the Petitioners [*should be* "*Suppliants*"] are a Corporation owning ships trading between England and India, China and Australia, respectively, and have for many years employed to navigate their steamers a class of British subjects, natives of India, known as Lascars.

2. Such Lascars have been shipped for many years in British India under Agreements in the form and with the provisions approved by the Governor-General of India in Council.

3. For many years the crew space provided for such Lascars has largely exceeded the crew space required to be provided for Lascars by the Indian Act of 1876 (1876, No. 13, Section 9), in cases to which that section is applicable, but has fallen short of the crew space required to be provided for seamen by Section 210 of the Merchant Shipping Act, 1894, in cases to which that section is applicable.

4. During the above time the measurement of the crew space occupied by such Lascars has usually been deducted from the measurement of the tonnage of Your Petitioners' ships, with the consequence that light dues and other dues payable on such tonnage have not been paid in respect of such crew space.

5. The "Australia" is one of Your Petitioners' ships trading between England and Australia, and carrying a crew of Lascars, accommodated as stated in paragraph 3 hereof and shipped under an Agreement as stated in paragraph 2 hereof.

6. The "Oriental" is one of Your Petitioners' ships trading between England and India, carrying a similar crew to that on the "Australia."

7. A Surveyor of Ships appointed by the Board of Trade has inspected the crew space occupied by the Lascars in the "Australia" and in the "Oriental," and alleging that the provisions of section 210 of the Merchant Shipping Act, 1894, have not been complied with has reported such failure to the appropriate Chief Officer of Customs, who thereupon has altered the registered tonnage of the said ships, respectively, and disallowed the deduction of the said crew spaces from the said tonnages, respectively. Your Petitioners admit that if Lascars are seamen within the meaning of that word in section 210 of the Merchant Shipping Act, 1894, the space required by that section has not been provided for such seamen.

8. Your Petitioners humbly submit that in taking, such action the said Surveyor acted on an erroneous construction of the Statutes applicable to such Lascars and their crew space and the registered tonnage of the said ships, and wrongly considered that the English Acts and not the Indian Acts regulated the crew space to be provided for Lascars.

9. If the view adopted by such Surveyor is correct Your Petitioners must either reduce the number of Lascars carried by their ships or must give up part of their present freight-earning space for the accommodation of the present number of Lascars. In consequence of such action of the said Surveyor, Your Petitioners also have been compelled to pay larger dues on an increased tonnage of the said vessels, and in particular have been compelled to pay larger light dues to Your Majesty's General Lighthouse Fund, in that they have now to pay such dues on the tonnage measurement of the said crew space.

Your Suppliants therefore humbly pray:—

1. For a declaration that the said Lascars on the "Australia" and "Oriental," respectively, are lawfully shipped and carried by the Peninsular and Oriental Steam Navigation Company under the Agreements referred to in paragraph 2 hereof.
2. For a declaration that the crew space provided for such Lascars complies with the Statutes in that behalf if it exceeds the crew space required by section 9 of the Indian Act, 1876, No. 13.
3. For a declaration that Lascars are not "seamen" within the true meaning of that term in section 210 of the Merchant Shipping Act, 1894.
4. For a declaration that the said Surveyor of Ships was not justified by the provisions of the Statutes in that behalf applicable in causing the deduction of the crew spaces occupied by Lascars in the "Australia" and "Oriental," respectively, from their registered tonnage to be disallowed, on the ground that such crew spaces, respectively, did not comply with the provisions of section 210 of the Merchant Shipping Act, 1894.

5. For a repayment of any extra sums paid by Your Petitioners to Your Majesty's General Lighthouse Fund in respect of the "Australia" and "Oriental" respectively, in consequence of the above disallowance of the deduction of the crew space from the registered tonnage.

Dated the 4th day of August, 1900.

(Signed)

Counsel for the Peninsular and Oriental Steam Navigation Company.

The Suppliants propose that this Petition should be tried in the County of Middlesex.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of the Peninsular and Oriental Steam Navigation Company.

DEMURRER, ANSWER AND PLEA

To the said Petition by His Majesty's Attorney-General for and on behalf of our Lord the King, delivered this 7th day of May, 1901, by the Solicitor to the Board of Trade.

DEMURRER.

Sir Robert Bannatyne Finlay, Knight, His Majesty's Attorney-General, on behalf of our Lord the King, gives the Court here to understand and be informed that the Petition of Right is bad in substance and in law on the ground that the said Petition does not show that the light dues paid by the Suppliants in respect of the "Australia" and "Oriental" therein mentioned were unlawfully levied by the General Lighthouse Authorities or unlawfully paid into the General Lighthouse Fund, and on other grounds sufficient in law to sustain this Demurrer.

ANSWER AND PLEA.

And Sir Robert Bannatyne Finlay, Knight, His Majesty's Attorney-General, on behalf of our Lord the King, gives the Court here to understand and be informed as follows:—

1. The Suppliants are owners of ships trading between England and Australia and India, including the "Australia" trading between England and Australia, and the "Oriental" trading between England and India, referred to in the Petition.

The crews of such ships are composed of European seamen, apprentices, and native seamen (Lascars).

The agreements with such native seamen are entered into in British India.

The Attorney-General will refer the Court to section 125 of the Merchant Shipping Act, 1894, and the unrepealed provisions of 4 Geo. IV. c. 80 relating to agreements with Lascars.

2. Both the said ships were registered in the United Kingdom previous to the passing of the Merchant Shipping Act, 1894, in accordance with the provisions

of the Merchant Shipping Act, 1854, and the Acts amending the same. The tonnage and register tonnage of the said ships were ascertained and the number denoting their registered tonnage respectively cut in on their main beams also in accordance with the provisions of the said Act.

All such provisions were re-enacted by the Merchant Shipping Act, 1894. For convenience the more important of the re-enacted provisions are hereinafter set out instead of those of the earlier Acts.

3. The questions raised by the Petition relate—

(a) To the places or spaces occupied by Lascars and appropriated to their use in the said ships.

(b) To the deductions allowed off their tonnage in respect of such spaces in ascertaining their register tonnage upon which register tonnage light dues leviable by the General Lighthouse Authorities and carried to the credit of the General Lighthouse Fund are paid by the Suppliants.

4. Upon the first of these questions the Attorney-General refers the Court to the following provisions of the Merchant Shipping Act, 1894. [*Provisions set out.*]

5. Upon the second question the Attorney-General refers the Court to the following provisions of the said Act. [*Provisions set out.*]

6. As regards the “Australia” and “Oriental,” the surveyors of ships followed the directions of the earlier Acts corresponding to those of the sections and schedule above set out in ascertaining previous to their registration their tonnage and register tonnage respectively. In particular as regards each space in the ship occupied by seamen or apprentices and appropriated to their use, the number of men which it was constructed to accommodate was certified and recorded by them as provided by the sixth schedule. The surveyors arrived at the certified number by assuming for each seaman or apprentice a space of not less than 72 cubic feet and of not less than 12 superficial feet measured upon the deck or floor of the particular space as directed by section 210 irrespective of whether the seamen or apprentices to occupy such space were Europeans or Lascars.

7. In the Suppliants’ ships separate spaces are appropriated to the use of the Lascar portion of their crews. For many years past the surveyors of ships, when it has been brought to their notice that any of such spaces are occupied by a greater number of Lascars than the number of seamen certified in respect thereof, have put in force the provisions of Clause (5) of the said Sixth Schedule. The deduction off the tonnage in respect of such spaces has been disallowed and the registered tonnage altered and increased accordingly.

8. In particular, as regards both the “Australia” and “Oriental,” it was found that the spaces appropriated to the use of Lascars on these ships were occupied by a greater number of Lascars than the number of seamen certificated in respect thereof. The deductions off their tonnages in respect of such spaces were accordingly disallowed and their registered tonnages altered and increased accordingly.

9. By reason of the registered tonnage of the “Australia” and “Oriental” having been thus increased, larger light dues have been levied by the General Lighthouse Authorities and paid by the Suppliants in respect of both vessels and carried to the General Lighthouse Fund.

10. The Suppliants contend :—

That Lascars are not seamen within the meaning of section 210 of the Imperial Act.

That the provisions of that section with respect to the accommodation for seamen do not apply when such seamen are Lascars, and

That the accommodation for Lascars is regulated by the following provisions of the Merchant Seamen (Indian) Act of 1859 as amended by the Merchant Seamen (Indian) Act of 1876. [*Provisions set out.*]

11. The Attorney-General admits that the accommodation provided by the Suppliants for Lascars in their ships fulfils the requirements of the above-mentioned sections of the Indian Acts of 1859 and 1876, but submits that for the reasons hereinafter appearing these sections are not applicable.

12. The Attorney-General refers the Court to sections 288 and 290 of the Merchant Shipping Act, 1854. The Indian Act of 1859 was passed (as recited in its preamble) under the powers conferred by the former section.

13. In 1859, when the principal Indian Act was passed, the Imperial Merchant Shipping Acts contained no provisions regulating the accommodation to be provided for seamen and the spaces appropriated to their use.

14. In 1867 the above matters were for the first time dealt with by Parliament by the Merchant Shipping Act, 1867 (30 & 31 Vict. c. 124), section 9 of that Act containing similar provisions to those of the Merchant Shipping Act, 1894, above set out, namely, section 79 (1) (a) (i), section 210 and the sixth schedule part thereof.

15. The Attorney-General submits :—

(a) That the Suppliants since 1867 have been and are now bound to appropriate to the use of Lascars the accommodation for seamen specified in section 210 of the Act of 1894 and the sixth schedule as part of that section.

(b) That by section 265 of the Act of 1894 the provisions of that Act relating to the accommodation for seamen must govern that matter and not those of the Indian Acts.

(c) That assuming Lascars are not seamen within the meaning of section 210, they cannot be regarded as seamen within the meaning of the sixth schedule as part thereof nor within the meaning of sect. 79 (1) (a) (i) and that from this point of view spaces deducted off the tonnages of the “Australia” and “Oriental” respectively in respect of their being occupied or appropriated to the use of seamen and as complying with the provisions of section 210 were properly disallowed on such spaces being occupied and appropriated to the use of Lascars which on the above-mentioned hypothesis are not seamen.

16. The Attorney-General further gives the Court here to understand and be informed that save as aforesaid he does not admit the several allegations in the Suppliants’ petition.

(Signed by the Junior Counsel to the Treasury.)

Demurrer.*General Form.*

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of A. B.

DEMURRER

To the said Petition by His Majesty's Attorney-General for and on behalf of our Lord the King delivered this day of by the Solicitor for the Affairs of His Majesty's Treasury (Law Courts Branch) 276 Royal Courts of Justice in the County of London.

Sir J. L. W. Knight His Majesty's Attorney-General on behalf of our Lord the King gives the Court here to understand and be informed that the Petition of Right is bad in substance and in law.

Alleging Matter not to be Cognisable by the Courts.

[*Begin as in the General Form, continuing*] in that it does not disclose a sufficient or lawful or any obligation on His Majesty towards the Suppliants or any legal or equitable right of the Suppliants against His Majesty cognisable by the Courts of this Country or enforceable therein and on other grounds sufficient in law to sustain this Demurrer.

On a Claim by a Servant of the Crown for Salary or Compensation.

[*Begin as in the General Form, continuing*] on the ground that the agreement alleged by the Suppliant whereby he claims to be entitled to serve up to the age of could not be lawfully made on behalf of His Majesty and that the said Petition does not disclose a sufficient or lawful or any agreement between His Majesty or anyone duly authorised on his behalf and the Suppliant nor any engagement or service of the Suppliant otherwise than at His Majesty's pleasure nor any right of the Suppliant to any sum of money salary allowance or pension or any claim of the Suppliant otherwise than upon His Majesty's bounty nor any award of His Majesty's Secretary of State in favour of the claim alleged and on other grounds sufficient in law to sustain this Demurrer.

On a Claim for Damages for Breach of Contract (see also above, p. 405).

[*Begin as in the General Form and continue*] on the ground that the allegations of fact contained in paragraphs 1 and 2 of the said Petition, the tender of the Suppliants dated and the letters of the Director of Works and of the Treasury dated and set out in paragraphs 3 and 4 of the said Petition respectively do not constitute a sufficient and binding contract as alleged whereby the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland (hereinafter called the Admiralty) were bound to take stone belonging to the Suppliants to the approximate amount of tons or any quantity of such stone other than so much of the same as they should from time to time desire to take.

Answer and Plea.*General Form.*

[For title and preliminary words, see the pleadings on p. 402, above, where no demurrer precedes; and where a demurrer precedes, the pleadings on p. 407, above.]

Sir J. L. W. Knight His Majesty's Attorney-General on behalf of our Lord the King gives the Court here to understand and be informed that the several averments and statements contained in the said Petition are not nor is any of them true in substance or in fact.

Joinder in Demurrer.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of A. B.

JOINDER IN DEMURRER.

The Suppliant, the above-named A. B., joins issue upon the Demurrer to the said Petition of Right and says that the said Petition of Right is good in substance and in law.

(Signed) C. D. *Counsel for the Suppliant.*

Delivered the day of by of Solicitors to the above-named Suppliant.

Replication.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of A. B.

REPLICATION

to the Answer and Plea of His Majesty's Attorney-General.

Your Suppliant joins issue upon the said Answer and Plea save in so far as the same contains admissions of matters alleged in his Petition.

(Signed) C. D.

Counsel for the said A. B.

Delivered the day of by of Solicitors for the Suppliant.

Another Form.

As to the Answer and Plea your Suppliants say that except in so far as the same consists of admissions they join issue.

Rejoinder.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of A. B.

REJOINDER.

Sir J. L. W. Knight His Majesty's Attorney-General on behalf of His Majesty joins issue upon the Suppliant's Replication herein.

[Signed by the Junior Counsel for the Crown.]

Delivered by the Solicitor for the Affairs of His Majesty's Treasury (Law Courts Branch) 276 Royal Courts of Justice in the County of London.

Change of Venue.

Consent of Parties.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

In the Matter of the Petition of Right of Messrs. Broadbent & Co.

We hereby consent to the Venue being changed from Leicester to Middlesex and that the Petition be heard by a Judge with a special Jury at the instance of Her Majesty's Attorney-General.

Dated the 23rd day of July 1900.

(Signed)

Solicitors on behalf of the Suppliants.

(Signed) A. T. HARE,

For the Treasury Solicitor on behalf of the A.-G.

Petition to the Lord Chancellor.

IN THE HIGH COURT OF JUSTICE.

Queen's Bench Division.

In the Matter of a Petition of Right of Messrs. Broadbent & Co.
of Leicester.

To the Right Honorable the Lord High Chancellor of Great Britain.

THE PETITION OF HER MAJESTY'S ATTORNEY-GENERAL

Sheweth as follows:—

On the 4th day of April 1900 the Suppliants presented a Petition of Right to Her Majesty praying for certain relief as therein mentioned.

Her Majesty endorsed the said Petition "Let Right be Done."

The place of trial chosen for the hearing of the said Petition by the Suppliants was Leicester.

It is inconvenient that the said trial should take place at Leicester and on the 23rd day of July 1900 the Solicitors respectively for Her Majesty's said Attorney-General and the said Suppliants signed a consent that the place of trial should be altered to Middlesex. To this written consent your Petitioner craves to refer.

Your Petitioner therefore prays that the place of trial of the said Petition should be changed to Middlesex accordingly.

And your Petitioner will ever pray &c.

Dated this 7th day of August 1900.

TREASURY SOLICITOR,

Law Courts Branch, 276, Royal Courts of Justice,
London.

HALSBURY, C.

Solicitor for Her Majesty's Attorney-General.

Consent to Point of Law being set down for Hearing.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Petition of Right of Elizabeth Ryan.

We hereby consent that the points of law raised by Sir R. B. Finlay Knight His Majesty's Attorney-General on behalf of His Majesty the King in his Demurrer to the said Petition be set down for hearing and disposed of forthwith and before the trial of the issues of fact in this proceeding.

Dated 13th June 1904.

(Signed) A. T. HARE,

for the Treasury Solicitor on behalf of the A.-G.

(Signed) A. B.,

*Suppliant's Solicitors.***Judgment on Demurrer.**

Monday the 1st day of August 1904.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

The Honourable Mr. Justice Bigham.

Petition of Right Elizabeth Ryan Suppliant <i>v.</i> The King.	}	Upon hearing the Attorney-General of Counsel on behalf of our Lord the King and Mr. of Counsel for the Suppliant This Court doth hold that the Demurrer by His Majesty's said Attorney-General for and on behalf of our said Lord the King to the said Suppliant's Petition is good and sufficient and doth order that this Demurrer do stand and be allowed.
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And it is ordered that judgment be entered herein for our said Lord the King and that the said Suppliant is not entitled to any of the relief sought by her said Petition.

By the Court.

PART II.**Petition of Right in the Chancery Division.****Petition of Right.**

Claim to Proceeds of Real Estate and Residuary Personal Estate of an Intestate in the hands of the Crown.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

Edward R. & I.

"Let Right be Done."

TO THE KING'S MOST EXCELLENT MAJESTY.

The humble Petition of A. B. of and C. D. of by their Solicitors
 Messrs. of

Sheweth as follows:—

1—13. [*Facts.*]

Your Suppliant therefore humbly prays:—

That, notwithstanding that in the aforesaid Order on Further Consideration it was declared that Your Majesty in right of Your Royal Prerogative was entitled

to the residuary personal estate of the testatrix E. F. and to the proceeds of sale of her real estate or the residue thereof, it may be declared that your Suppliants as next of kin of the said testatrix are entitled to such residuary estate and to such proceeds of sale or to distributive shares therein. And that Your Majesty may be pleased to direct that the Lords Commissioners of Your Majesty's Treasury may repay or re-transfer (subject to all proper allowances) all moneys, stocks and funds paid or transferred in pursuance of the said Order on Further Consideration. And that the funds and moneys so to be repaid or transferred may be administered and distributed among the next of kin of the said testatrix living at her death or those claiming through or under them respectively according to their respective rights and interests.

Dated the day of .

(Signed) G. H.
Counsel for the Suppliants.

*Claim to Proceeds of Real Estate and Personal Estate of an Intestate
standing to the Account of the Paymaster-General.*

[Title, &c., as in the previous Form.]

1—26. [*Facts.*]

27. Your Suppliant therefore humbly submits that it ought to be declared that C. D. was the heir-at-law of the testatrix E. F. and was entitled to the said sums of £ money on deposit and £ cash and any interest so transferred and paid as aforesaid to Her late Majesty's Paymaster-General and to the said balance paid as aforesaid by the receiver to the account of Her late Majesty's Paymaster-General's cash account at the Bank of England in pursuance of the said order of the day of . And that Your Majesty will be graciously pleased to direct by warrant under Your Royal Sign Manual that the Paymaster-General shall be ordered, after providing for Government duty, to transfer and pay to your Suppliant, as the legal personal representative of the said C. D. the said sums of £ money on deposit and £ cash, and any interest, and the balance paid by the receiver to the account of Her late Majesty's Paymaster-General's cash account at the Bank of England, in pursuance of the said Order of the day of so transferred and paid as aforesaid to Her late Majesty's Paymaster-General.

Your Suppliant therefore humbly prays that Your Majesty will be graciously pleased to direct this Petition to be endorsed with Your Majesty's fiat
"Let right be done."

And your Suppliant will ever pray, &c.

Dated this day of .

(Signed) G. H.
Counsel for the above-named Suppliant, A. B.

Another Form.

[Title, &c., as in the first Form.]

1—44. [*Facts.*]

45. Your Suppliant humbly submits that under the circumstances herein-before appearing an inquiry ought to be directed by Your Majesty's Honourable Court as to who were the persons entitled by virtue of or according to the Statutes for the distribution of intestates' estates or otherwise to the personal estate of A. B. as to which she died intestate living at the time of her death and whether any of them are since dead and if so who are their respective

legal personal representatives and in what shares and proportions such next of kin and legal personal representatives are entitled to the said sum of £ and the interest thereon.

46. And that upon such next of kin being ascertained it may be declared that such next of kin and legal personal representatives respectively are entitled to the said sum of £ transferred as aforesaid to the said Assistant Paymaster-General and the Solicitor to the Treasury together with the interest thereon at the rate of 2l. 10s. per cent. per annum.

47. And that thereupon Your Majesty will be graciously pleased to direct by a warrant under Your Royal Sign Manual that the Assistant Paymaster-General and the Solicitor to the Treasury should be ordered after providing for Government duties to distribute the said sum of £ and the said interest among the said next of kin and legal personal representatives of the said testatrix in the shares and proportion to which they shall respectively be found entitled as aforesaid.

Your Suppliant therefore humbly prays that Your Majesty would be graciously pleased to direct this Petition to be endorsed with Your Majesty's fiat "Let right be done," and your Suppliant will ever pray &c.

Dated

(Signed) G. H.

[*Counsel for the Suppliant.*]

Defence of the Attorney-General.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

In the Matter of the Petition of Right of A. B.

Between A. B., Suppliant
and
The King.

DEFENCE

By His Majesty's Attorney-General for and on behalf of Our Lord the King.

Sir R. B. F. His Majesty's Attorney-General on behalf of Our Lord the King gives the Court to understand and be informed as follows:—

1. The will codicil affidavit Chief Clerk's certificate order and several other documents if any whatsoever in the Petition of Right respectively mentioned or referred to are not any of them admitted to be therein sufficiently or correctly set forth or stated.

2. The Attorney-General does not admit any of the allegations contained in the paragraphs of the Petition of Right numbered respectively from 10 to 21 inclusive or any of such paragraphs.

Delivered the day of by the Treasury Solicitor 276 Royal Courts of Justice London Solicitor to His Majesty's Attorney-General.

Defence and Counterclaim of the Attorney-General.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

In the Matter of the Petition of Right of A. B.

Between A. B., Suppliant

and

The King.

Defence and Counterclaim by His Majesty's Attorney-General for and on behalf of Our Lord the King delivered the day of by the Solicitor to the Treasury (Law Courts Branch), Royal Courts of Justice, London.

DEFENCE.

Sir R. B. F., His Majesty's Attorney-General, on behalf of Our Lord the King, gives the Court to understand and be informed as follows:— [*set out Defence*].

COUNTERCLAIM.

And the Attorney-General on behalf of Our Lord the King further gives the Court to understand and be informed as follows:— [*set out Counterclaim*].

The Attorney-General on behalf of Our Lord the King counterclaims:—

1. To have such accounts as aforesaid taken.
2. Payment by the Suppliants to the Lords Commissioners of His Majesty's Treasury of what shall appear to be due to the said Commissioners upon the taking of such accounts.

Reply.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

In the Matter of the Petition of Right of A. B.

Between A. B., Suppliant

and

The King.

REPLY.

The Suppliant as to the Defence says:—

She joins issue thereon with His Majesty's Attorney-General for and on behalf of Our Lord the King.

Delivered by the above-named Suppliant this day of by K. L.
of his Solicitor.

BOOK IV.

Escheat.



CHAPTER I.

NATURE AND SUBJECT MATTER OF ESCHEAT.

General Observations.

ESCHEAT, or the reverter of land to the lord of the fee, occurs *propter defectum tenentis*. At the present time it may be said generally that, for practical purposes, escheat, except in the case of copyholds, is to the King, either in right of his Crown or in right of his Duchy of Lancaster or his Duchy of Cornwall, or to the personage for the time being entitled to the possession of the Duchy of Cornwall, and that it occurs only on account of the actual failure of the heirs of the holder.

In the case of escheats within the Duchy of Lancaster the King takes in right of his Duchy; but in the case of escheats in liberties of the Duchy not lying within the county he takes in right of his Crown, by the Revenue, Friendly Societies and National Debt Act, 1882 (45 & 46 Vict. c. 72), s. 24. Escheats in the County Palatine of Durham belong to the King in right of his Crown, by the Durham (County Palatine) Act, 1836 (6 & 7 Will. IV. c. 19), s. 1, and the Durham (County Palatine) Act, 1858 (21 & 22 Vict. c. 45), s. 5.

The Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 6 (printed below, p. 736), which extends to the Duchy of Lancaster by sect. 8, enables the Crown to waive its right by Treasury warrant, and thereupon the Treasury Solicitor may convey the property.

Formerly escheat or forfeiture took place, not only on actual failure of heirs, but also on attainder or corruption of blood, causing a constructive failure of heirs; but this was substantially put an end to by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 1, which provides that "no confession, verdict, inquest, conviction or judgment of or for any treason or felony or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in this Act shall affect the law of forfeiture consequent upon out-

lawry." Again, aliens formerly were regarded as having no inheritable blood to transmit, and therefore as being unable to have heirs; but the Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 2, now enacts that "real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural born British subject; and a title to real and personal property may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural born British subject," with certain provisos which are here immaterial. This section, however, is not retrospective, and the Crown would be entitled to land acquired by an alien or a trust of land created in favour of an alien before the Act. (*Sharp v. St. Sauveur* (1871), L. R. 7 Ch. 343; 41 L. J. Ch. 576.)

Escheat by actual failure of heirs, which, as we have said, is the only form of escheat which is now of real importance, may occur—(a) by the death of the holder, leaving no known or ascertainable heir, and without having disposed of his interest by alienation in his lifetime or by will; (b) by the death of the holder, being a bastard, and without having disposed of his interest as aforesaid, and without lawful issue. If such heir or issue, in either case, is a monster, the law will not recognize its right. (Co. Lit. 7 b.)

But the doctrine of escheat on failure of heirs is, it has been said, not to be applied to the failure of successors to a corporation which has been dissolved, and in such a case the lands revert to the donor, and do not escheat to the Crown. (Co. Lit. 13 b; 10 Vin. Abr. Escheat, A. 3; *Dean and Canons of Windsor and Webb's Case* (1614), Godb. 211.) But in *Johnson v. Norway* (1623), Winch, 37, the Court inclined to the opinion that in such a case there was an escheat. Coke's view, however, is cited with approval in *A.-G. v. Lord Gower* (1740), 9 Mod. 224, 226, and *Hastings Corporation v. Letton*, [1908] 1 K. B. 378; 77 L. J. K. B. 149. *Secus*, as to the personalty of a dissolved corporation, which the Crown takes as *bona vacantia*. (See *Cunnack v. Edwards*, [1896] 2 Ch. 679; 65 L. J. Ch. 801; *In re Higginson and Dean*, [1899] 1 Q. B. 325; 68 L. J. Q. B. 198, and below, p. 494.) All this is, of course, subject to any modern statutory provisions affecting the destination of the property of dissolved companies.

It must be admitted that the principle enunciated by Coke as to the fate of lands of a defunct corporation is not very strongly supported by authority, and does not seem to be very convincing in itself. The question has been raised on several occasions in comparatively recent times, and varying opinions have been given upon it, but the matter has not come before a Court for decision. The better opinion, however, seems to be that Coke in laying down the

principle as applicable to corporations in general has for once been nodding. The authorities, it may be pointed out, relate generally to the dissolution of religious bodies to whom grants had been made in frank almoign before the Statute *Quia Emptores*, and, as the subjects of such grants were necessarily holden of the original donors, all alienation having been prevented by the Statute of Westminster II. c. 41, and the writ of *contra formam collationis*, in such cases going back to the donor was in fact escheating to the lord. Further, the cases frequently relate to advowsons, with regard to which it was a question whether they lay in tenure at all, and whether, even in the case of a private person dying without heirs, they did not go back to the donor instead of escheating to a lord. See Roll. Abr. Eschete A. (6); Cruise, Dig. Advowson, c. 1, s. 18. It is scarcely possible here to embark on an elaborate discussion of the point, but the high authority of Coke makes it worth while to collect a list of all the authorities with which the author is acquainted as bearing on the matter, for the benefit of anyone who may have to inquire into it, and to make certain observations upon them. They are, in addition to those already cited, as follows:—Y. B. T. 8 Edw. II. fo. 279; T. 9 Edw. III. pl. 24; T. 7 Edw. IV. pl. 2; P. 21 Edw. IV. pl. 1; T. 5 Hen. VII. pl. 3; H. 21 Hen. VII. pl. 2; *Southwell v. Ward or Wade* (1595), Poph. 91; Roll. Abr. Eschete (A) 2; *Anon.* (1592), Moo. 282; Fitzh. N. B. 33, 143; Statutes, 17 Edw. II. st. 2 (st. 3, Ruff.), (as to which see *Magdalen College Case* (1616), 1 Roll. R. 151, 167, 168; *Whitton v. Weston* (1629), W. Jones, 182, 191); 27 Hen. VIII. c. 28, ss. 3, 8; 31 Hen. VIII. c. 13.

The authorities cited above were examined in most learned fashion by Mr. Archibald Smith, Conveyancing Counsel to the Treasury, in 1862, and his conclusion was that, with the exception of *Dean and Canons of Windsor and Webb's Case* (1614), Godb. 211, the authorities were all adverse to Coke's conclusions. He also pointed out the difficulties in principle which were involved. The estate is certainly not (as Coke says it is) a fee simple upon condition that, if the body corporate be dissolved, the land shall escheat. If it were so, the land would escheat in whatever hands it might be; but, in fact, it clearly does not escheat, if there has been an alienation either wholly or partially, as by a lease before the dissolution (see *Southwell v. Ward or Wade* (1595), Poph. 91; Roll. Abr. Eschete (A) 2; *Pits v. James* (1615), Hob. 121; Moo. 865; 1 Roll. Rep. 416, where the decision was the reverse of what is stated in Grant on Corporations, 303, n.). The condition, therefore, on which Coke relies, must be taken to be a condition that, on the corporation being dissolved before the alienation of the lands, the lands shall revert to the grantor and

not to the lord—a condition which it is impossible to understand, at all events in cases in which it does not depend on the spiritual nature of the subject of gift or of the corporation. Why should such a condition apply to land conveyed for value to a non-spiritual corporation?

Under the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1, "Land [with certain exceptions specified in sect. 6] shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from Her Majesty the Queen, or of a statute for the time being in force, and if any land is so assured otherwise than as aforesaid, the land shall be forfeited to Her Majesty from the date of the assurance, and Her Majesty may enter on and hold the land accordingly." The section then proceeds to enact similar provisions for the case of forfeiture to a mesne lord or mesne lords. "Land," in this Act, by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), s. 1, repealing sect. 10 (iii.) of the earlier Act, includes "tenements and hereditaments, corporeal and incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land."

The Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, does not bind the Crown, and therefore the legal estate in escheated land does not vest in the Treasury Solicitor, and the grant of administration to him on behalf of the Crown is still of the personal estate only. (*In the Goods of Hartley*, [1899] P. 40; 68 L. J. P. 16.) *Secus*, apparently, in the case of escheat to a mesne lord. In *In the Goods of John Ball*, [1902] W. N. 226, where there appeared to be no heir or next of kin, administration of both realty and personalty was granted to a creditor, counsel for the Treasury Solicitor consenting as to the personalty, but pointing out that he had no power to consent as to the realty, but that the grant would not prejudice the rights of the Crown in any way.

The Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 5 (below, p. 735), provides that in any proceeding in the High Court in England or Ireland or in the Palatine Chancery Court, where it appears that the Crown is entitled to any hereditament or interest therein, the Court may, on the application or with the consent of the Attorney-General, though no office has been found nor commission issued or executed, order a sale, and the Crown's share of the proceeds to be paid over to the Crown. It applies sect. 1 of the Trustee Act, 1852 (15 & 16 Vict. c. 55), now sect. 30 of the Trustee Act, 1893 (56 & 57 Vict. c. 53), to such sale. See *In re Pratt's Trusts*, [1886] W. N. 144; 55 L. T. 313.

Specific Applications of the Law of Escheat.

Freeholds.

It is with freeholds, as has already been pointed out, that the law of escheat is primarily concerned. Compare *In re Mercer and Moore* (1880), 14 Ch. D. 287, 295; 49 L. J. Ch. 201. In that case the Court inclined to the opinion that freehold property of a bankrupt disclaimed by a trustee under the Bankruptcy Act, 1869 (33 & 34 Vict. c. 71), s. 23 (now replaced by sect. 55 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52)), reverted to the Crown.

Equitable Interests in Freeholds.

Formerly, in accordance with the decision in *Burgess v. Wheate* (1759), 1 Eden, 177; 1 W. Bl. 123, it was uniformly held that the Crown had no title to equitable estates in freeholds; the Courts apparently not observing that that case only decided that the Crown had no title by escheat, and that the question whether it might not have a title to such estates as *bona vacantia* was overlooked. This is pointed out in *Taylor v. Haygarth* (1844), 14 Sim. 8, 16 (*arg.*). The principle did not extend to chattels real or personal. (*Middleton v. Spicer* (1783), 1 Bro. C. C. 201; *In re Higginson and Dean*, [1899] 1 Q. B. 325, 329; 68 L. J. Q. B. 198.) Subsequent cases to *Burgess v. Wheate*, to which reference may be made, are *Davall v. New River Co.* (1849), 3 De G. & Sm. 394; 18 L. J. Ch. 299; and *Onslow v. Wallis* (1849), 1 Mac. & G. 506; 19 L. J. Ch. 27. In *Henchman v. A.-G.* (1834), 3 My. & K. 485, 492, Lord Brougham, L.C., said: "Real estate it [the Crown] can never take unless by escheat . . . but any prerogative extending to real estate, as distinct from escheat, I never yet heard of." It has, however, already been pointed out that the matter had never been argued except on the basis of escheat, but whether there was any logical objection to an equitable interest in land being *bonum vacans, quære*.

The Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), ss. 4, 7 (printed below, pp. 735, 736), was intended to alter the law in respect to the non-escheat of equitable interests. Those sections provide that, in the case of persons dying after August 14, 1884, without an heir and intestate in respect of real estate, whether consisting of any legal or equitable interest in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, whether devised to trustees by the will or not, the law of escheat is to apply as though such estate or interest were a legal estate in corporeal hereditaments. Sect. 7 extends this to beneficial interests in real estate, whether legal

or equitable, which are not effectually disposed of owing to circumstances happening before the death of the deceased. It must be admitted that these sections are very inartistically drafted. Inasmuch as escheat is to a lord, it is difficult to see how the law of escheat can be applied to things which have, by their nature, no lord. The intention obviously is that the Crown or a mesne lord, as the case may be, is to take the various interests therein enumerated on the death of the holder without an heir and intestate just as they have hitherto taken his legal interest in real estate, and it would have been better to say so in plain language. It would seem to follow that the procedure to be adopted will be just the same as in the case of escheat in the proper sense of the word. Where the estate or interest is vested in trustees, the Crown or mesne lord presumably has a right to call on them for a conveyance or transfer.

Viscount Downe v. Morris (1844), 3 Hare, 394; 13 L. J. Ch. 337, decided that the lord of a manor taking by escheat land subject to a demise by way of mortgage for a term of years created by the tenant was entitled in equity, as against the mortgagee, to redeem the term; but this decision was criticised in *Beale v. Symonds* (1853), 16 Beav. 406; 22 L. J. Ch. 708, where it was held that, a person having made a mortgage in fee and dying without heirs, the equity of redemption did not escheat to the Crown, but belonged to the mortgagee subject to the debts. Sir J. Romilly, M.R., also said that he could discover no ground, on which an equity of redemption should be held to escheat to the Crown, which would not apply equally to the case of a mere trust. A similar opinion was also expressed by the majority of the Court in *Burgess v. Wheate, ubi sup.*

Heritable securities in Scotland are still heritable *quoad fiscum* by the Titles to Land Consolidation (Scotland) Act, 1868 (31 & 32 Vict. c. 101), s. 117.

The case of an equitable mortgage stands on quite a different footing. See *Prescott v. Tyler* (1837), 1 Jur. 470; 2 Jur. 870; *Hodge v. A.-G.* (1838), 3 Y. & C. 342; 8 L. J. Ex. Eq. 28; *Rogers v. Maule* (1841), 1 Y. & C. C. C. 4; *Hancock v. A.-G.* (1864), 33 L. J. Ch. 661.

Copyholds.

A copyhold does not escheat to the Crown, but to the lord. In *Walker v. Denne* (1793), 2 Ves. Jun. 170, 187, Lord Loughborough, L.C., says: "The Master has reported that one moiety of the copyhold escheated; but that must be a mistake, as a copyhold cannot escheat to the Crown." So *R. v. Budd* (1758), Park. 190; and, as to a forfeiture before 1870, *R. v. Mildmay* (1834), 5 B. & Ad. 254.

With regard to equitable interests in copyholds, or such an interest as a surrenderee of a copyhold has before admittance, see the remarks on equitable interests in freeholds above, p. 424. Such interests, with or without the assistance of the Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 4, would seem to escheat to the lord in the same way as a copyhold to which the deceased had been admitted. This appears to have been decided in the cases in *Bro. Abr. Escheate*, pl. 16, 26; and see *Scriven on Copyholds* (ed. 7), p. 232. On the other hand, see *Watkins on Copyholds* (ed. 4), I. 418, where it is suggested that the lord could not have seized the land of an attainted person who was not admitted till after attainder, as he had not the land at the time of attainder. See also the note to *Middleton v. Spicer* (1783), 1 *Bro. C. C.* 201, 205, and the remarks on equitable interests in freeholds, above. But where the lord admitted a tenant on the trusts of an indenture, referred to in the surrender, to wit, that the surrenderee might sell the tenement, retaining out of the proceeds the sum of 700*l.* and interest, for which the tenement was a security, paying the balance to the surrenderor, it was held that, on the failure of the heirs of the surrenderee, the surrenderor had a right to be re-admitted on payment of the mortgage debt, and that the surrenderee's personal representatives were entitled to receive such debt. (*Weaver v. Maule* (1830), 2 *Russ. & M.* 97; 9 *L. J. (O. S.)* 20.) Where no condition was expressed in the surrender to the mortgagee and his heirs, and the mortgagee died intestate and without heirs, the lord took the copyhold as an escheat. (*A.-G. v. Duke of Leeds* (1833), 2 *My. & K.* 343.)

In *Gallard v. Hawkins* (1884), 27 *Ch. D.* 298; 53 *L. J. Ch.* 834, the Court ordered the admission of the customary heiress of the last survivor of the trustees of a copyhold, although the *cestui que trust* had died without heirs.

The Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 21 (1 *b*), provides, in the case of enfranchised copyholds, that the lord shall be entitled, where there is an escheat for want of heirs, to the same right as he would have had if the land had not been enfranchised.

It is the duty of the jury at the inquisition to find the tenure of the land in question (see *Escheat Procedure Rule* 11, p. 833); *semble*, if no proof is given that the land is held of any other lord, the jury may presume that it is held of the King. (See *Doe d. Hayne v. Redfern* (1810), 12 *East*, 96; *Williams on Real Property* (ed. 20), p. 57.)

Lands subject to Charges.

It was said in *Duke of Bedford v. Coke* (1751), 2 *Ves. Sen.* 116, that "the Crown on a forfeiture takes the estate subject to all charges and

incumbrances, which would have bound the party forfeiting, and must be bound too, where no fraud in respect of the Crown. That is, where it is a conveyance which is a charge on the estate [see above, p. 333]; for to be sure the Crown is not subject to debts at large of the forfeiting party, the creditors of whom were quite without remedy; as there is no such law in England, letting in debts at large, though there is in Scotland: but the Crown must take the estate liable to the charges thereon." With this case, however, must now be read *Evans v. Brown* (1842), 5 Beav. 114; 11 L. J. Ch. 349, decided after the passing of the Administration of Estates Act, 1833 (3 & 4 Will. IV. c. 104), and *Hughes v. Wells* (1852), 9 Hare, 749. See also *In the Goods of John Ball*, [1902] W. N. 226. Reference may also be made here to *Henchman v. A.-G.* (1834), 3 My. & K. 485, where there was a devise of copyhold on condition that the devisee paid a sum of money for a purpose which was void in part, and it was held that the void portion was to be considered as real estate undisposed of, and that the devisee and not the Crown was entitled to it.

Terms.

It was held in *Thurxton v. A.-G.* (1685), 1 Vern. 340, that where one seised in fee limited a term of years to trustees in trust for such uses as he should appoint, and died without any such appointment and without heirs, the Crown took the term as well as the reversion in fee; see also *Lady Bodmin v. Vandebendy* (1685), 1 Vern. 356, 357, n.; *Barrow v. Wadkin* (1857), 24 Beav. 1. *Viscount Downe v. Morris* (1844), 3 Hare, 394, was a somewhat similar decision in the case of an escheated copyhold. See now the remarks on equitable interests in freeholds in general, above, p. 424.

Lands or Money subject to a Trust for Conversion.

In *Taylor v. Haygarth* (1844), 14 Sim. 8, where a testatrix gave her real and personal property to trustees in trust to sell the same and stand possessed of the proceeds for persons to be named in a codicil, and died without making a codicil and without heir or next of kin, it was held that the trustees were entitled to the proceeds of the real estate for their own benefit, while the Crown was entitled to the personal estate [*secus*, where the trustee had a bare power to sell (*Reeve v. A.-G.* (1741), 2 Atk. 223)]; but this decision was held in *In re Bond*, [1901] 1 Ch. 15; 70 L. J. Ch. 12, not to apply to a case where an owner in fee simple devised land to one for life with no devise over, and after the owner's death without heir the tenant for life sold the land under the powers of the Settled Land Acts, and the proceeds remained in the hands of trustees appointed for the purposes

of those Acts. The Court held that the fund, on the death of the tenant for life, vested in the Crown as *bona vacantia*.

In *In re Wood*, [1896] 2 Ch. 596; 65 L. J. Ch. 814, the Intestates Estates Act, 1884, ss. 4, 7 (see above, p. 424), was held to operate so as to cause to escheat to the Crown a tenement in fee simple, which a testatrix, dying without an heir, had devised to her executors upon trust for sale and for payment of debts and legacies, there being no gift of residue.

Where, however, a testator directed money to be laid out in the purchase of land and the money had not been so laid out, it was held that the Crown on the failure of heirs had no equity against the next of kin to have it laid out in real estate in order to claim by escheat. (*Walker v. Denne* (1793), 2 Ves. Jun. 170.)

CHAPTER II.

PROCEDURE ON INQUISITION AND TRAVERSE.

General Observations.

THE procedure has mercifully been simplified, though not so much as it ought to have been, by the Escheat (Procedure) Act, 1887 (50 & 51 Vict. c. 53), which is printed below, p. 737. That Act, by sect. 2, gives the Lord Chancellor, with the assent of the Treasury, power to make rules for the procedure on inquisitions of escheat and other inquisitions, such rules to provide that the inquisition is to find of whom the real estate was held, that it shall be returned into the Central Office, and that persons aggrieved may traverse it. In the case of the Duchy of Lancaster the rules are to be made by the Chancellor of the Duchy with the approval of the Lord Chancellor. The Act also repeals a great number of old statutes dealing with escheat.

Rules, dated July 25, 1889, were duly made under this provision, applying to England and Wales and the Duchy of Cornwall, and are printed below, p. 833. No rules have ever been made for the Duchy of Lancaster, and all the old statutes of escheat have been repealed; but by sect. 3 (3) of the Act of 1887, any existing practice is preserved except in so far as is otherwise directed by the Rules. Notes on this existing procedure are given below, p. 442.

It was contemplated by the Act of 1887, s. 2 (2), and Escheat Procedure Rule 16, that Rules of the Supreme Court should be made to regulate the procedure on traverse of escheat, but no such Rules have been made. In the author's opinion, the present position is that, up to and including the close of the pleadings and the sending of the issues for trial into the King's Bench Division, the procedure remains what it was before any of the modern improvements were introduced by the Common Law Procedure Acts and the Judicature Acts, but that the trial of the issues in the King's Bench Division is regulated, unless and until special rules are made, by the current practice, like the trial of any other issues, but subject, of course, to the prerogative of the Crown in litigation, dealt with below in Book VI. of this work. The author respectfully differs from Short and Mellor's Crown Office Practice, and submits that, though the

proceedings are filed in the Crown Office, since the senior clerk in that office has taken the place of the Clerk of the Petty Bag (see below, p. 433), the trial of the issues is not a proceeding on the Crown side of the King's Bench Division, but an ordinary trial of issues at law, and that therefore none of the Crown Office Rules apply to it. This view is supported by the form of mittimus printed below (p. 461), which sends the issues for trial into the King's Bench Division without qualification, and in the same manner as ordinary issues.

Procedure in England and Wales, exclusive of the Duchy of Lancaster.

Inquisition.

The Necessity of an Office.

It is generally necessary, and always desirable, that there should be an office or inquisition to find the King's title where it does not already appear as of record. (See Staundford, *Praerog.* 56 a.)

In the case of an escheat on failure of heirs, it is clear that in practically every case the Crown's title will not be of record, and therefore it may be stated generally that there should be an inquisition in every case, and this is, in fact, the practice. The matter is discussed by Lord Ellenborough, C.J., in *Doe d. Hayne v. Redfern* (1810), 12 East, 96, 109: "There is nothing upon any record to shew any title in the Crown, nor has the possession been vacant from the moment of Eliz. Bradbury's death: and whenever the King's right, without office, comes under discussion, those may be found important considerations. The cases of the King's tenants *in capite* and his other known tenants bear no analogy to this case; because there the tenure was of record, and upon the tenant's death the King was entitled to take seisin of the land, and to receive the profits to his own use, till the heir appeared to claim the land and receive investiture: and if the heir were under age, the King was entitled to wardship; if of full age, to primer seisin or relief: and if there were no heir, the King's seisin was of course indefeasible. These cases, therefore, in which the tenure under the King was recorded, and in which the seisin devolved upon him on his tenant's death, conclude nothing in a case in which no tenure is recorded, and in which it is wholly uncertain under whom the tenure is." His Lordship mentioned *Sadlers' Company's Case*, 4 Rep. 54 b, 58 a; *Willion v. Berkley* (1558), Plowd. 223, 229; *Nichols v. Nichols* (1574), Plowd. 477, 481; Gilb. Exch. 110; and Staundford, *Praerog.* 53 b, 54 a, as authorities which might be referred to upon this point.

It has further been stated that in all cases where a common person cannot have a possession, either in deed or in law, without an entry, the King cannot have it without an office or other record. (Staundford, Praerog. 55 b; Com. Dig. Praerog. D. 67.)

But the Queen's Remembrancer Act, 1859, s. 25 (below, p. 680), now provides that, when a right of re-entry upon hereditaments has accrued to the Crown, it may be exercised without office found or actual re-entry made.

There seem, however, to be certain exceptions to the general rule. Thus there is said to be no need for an office in the case of—(a) Seizures within the realm of lands of aliens *ratione guerre*, since the King's title is notorious enough, although it appear not of record; but there must be an actual seizure (Staundford, Praerog. 56 a; compare *Ogden v. Folliot* (1790), 3 T. R. 726). (b) The Crown's claim to the temporalities of a bishop during the vacation of a see (Chitty, Prerog. 249). (c) An estate devised to the Crown by a subject (Bro. Abr. Prerog., pl. 143). (d) Choses in action of an alien enemy. See also above, p. 177, where these were taken by an information in the nature of a *devenerunt*. (e) The land of a deceased alien; *secus*, if the alien be alive, on the ground that *prima facie* a resident in this country is a natural-born subject (Chitty, Prerog. 229, 249; Co. Litt. 2 b; *Page's Case* (1587), 5 Rep. 52 a; *Beaumont's Case* (1613), 9 Rep. 138 b, 141 a; Cole on Ejectment, 578; Com. Dig. Alien C. 3; Vin. Abr. Alien A., pl. 18; Shep. Touchstone, 232; Hansard on Aliens, 131, 132; *Anon.* (1586), 1 Leon. 47; *Anon.* (1588), 4 Leon. 84; *King v. Boys* (1569), Dy. 283 b; *Doe d. Miller v. Rogers* (1844), 1 C. & K. 390, 391, n.; *R. v. Holland* (1670), Aleyn, 14; *A.-G. v. Duplessis* (1752), Park. 144; *Duplessis v. A.-G.* (1753), 1 Bro. P. C. 415, 420). All this, of course, is abolished in the case of alien individuals by the Naturalization Act, 1870, s. 2, as explained above, p. 421; but the principle would seem still to apply to the land of alien corporations, and any other corporations, who are compelled to obtain a licence in mortmain to hold land and have not done so, and it does not appear to the author that the terms of the Mortmain and Charitable Uses Act, 1888, s. 1 (set out above, p. 423), which confer a right of entry on the Crown in such a case, do away with the necessity of an inquisition.

The advisability of an inquisition in the case of escheat is further emphasised by sect. 2 (3) of the Escheat (Procedure) Act, 1887 (p. 738), which provides that no grant shall be made of real estate alleged to be escheated till after the return of an inquisition finding the title thereto, but subject to the provisions of sect. 6 of the Intestates Estates Act, 1884. This latter section (p. 736) enables the Crown

to waive its rights before inquisition and to have the real estate conveyed, but also enables any person claiming any estate or interest in the real estate to demand an inquisition, on giving security for the costs thereof. If there be no such inquisition, the conveyance is to have the same effect as a grant by the Crown after office found, and any person bringing an action to establish a claim to the real estate is to be in the same position and have the same rights as if he were traversing such office found.

The Commission.

This is now issued by the Clerk of the Crown in Chancery under sect. 5 of the Great Seal (Offices) Act, 1874 (37 & 38 Vict. c. 81). It issues under the Wafer Great Seal, in pursuance of the Crown Office Act, 1877 (40 & 41 Vict. c. 41), s. 4, and the Rule dated August 8, 1878, made under sect. 5 of that Act (St. R. & O. Rev., Vol. 2, Clerk of the Crown in Chancery, p. 17); and in the form of which a specimen is printed below, p. 448.

The Commissioners usually consist of a barrister, the Treasury Solicitor, and others. The Commission recites that the King has been given to understand that certain hereditaments have escheated to the Crown, and orders the Commissioners to enquire by a jury as to the hereditaments of the deceased in the county, when and where he died, and whether without disposing of such hereditaments by will and without heir; and, if so, the yearly value of the hereditaments and of whom they were held; whether they have devolved to the Crown by escheat, and who has received the mesne profits thereof, and in whose possession they are. It further orders the Commissioners to seize such hereditaments into the King's hands, and to return the inquisition into the High Court together with the commission. The commission also gives the Commissioners power to summon witnesses, and commands the sheriff to summon a jury. The fee is 6*l.* for a single skin and 3*l.* for every additional skin.

The Inquisition.

The procedure is governed by Escheat Procedure Rules 1—9 (below, p. 833). Any one or more of the Commissioners may exercise all their powers (Rule 2). The inquest is to be held in public, at a place appointed by the Commissioners, in the county where the lands are situate, and may be adjourned from time to time and from place to place (Rule 3). The jury is to be twelve in number, though the Commissioners may proceed with not less than nine, impannelled by the sheriff and sworn by the Commissioners to give a true verdict. The Commissioners may discharge the jury, and have

a new one impannelled (Rules 4, 7). The witnesses may be compelled to attend by Crown Office subpoena, and any person setting up any title to the subject-matter of the inquest shall be heard, and may cross-examine by himself, his attorney or counsel. The evidence of any person proved to be unable to attend may be taken by affidavit or declaration (Rules 5, 6, 8). The verdict or finding of a majority of the jury may be taken (Rule 9).

The property is thereby seized into the Crown's hands, but no actual entry is usually made, unless a tenant is in occupation under a tenancy which is not valid or does not continue after the escheat to be valid. Where tenants are in occupation under tenancies which continue valid after the escheat, they are asked to attorn to the Crown. A form of attornment is printed below, p. 462. As to the extent to which the covenants and stipulations of the demise would be binding for or against the Crown, see Co. Lit. 215 a; Shep. Touchstone, 150.

The Return.

The inquisition may be in writing or print, or both, and must be under the hands and seals of the Commissioners present and of the jurors concurring therein. It need not be indented, and a counterpart need not be delivered to any of the jury (Rules 10, 12). It must find of whom the real estate was held, and must contain a finding with respect to every other material matter specified in the commission (Rule 11). Forms of inquisition are printed below, pp. 449, 452.

It is to be returned, with the commission, into the Central Office, and filed in the Crown Office Department (Rule 13). The fee for filing is 2s. 6d. Formerly it had to be returned within one month of the inquiry by 36 Edw. III. c. 13, and 23 Hen. VI. c. 16 (c. 17, Ruff.), both now repealed. The business connected with the return and subsequent proceedings in connection with escheat belonged to the Common Law jurisdiction of the Court of Chancery. (See *In re Ann Parry* (1866), L. R. 2 Eq. 95; 35 L. J. Ch. 651.) This jurisdiction was transferred to the High Court by sect. 16 of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), but it was not assigned to any particular Division of the High Court by sect. 34 of that Act.

The office which dealt with Common Law business in Chancery was the Petty Bag Office. Commissions of escheat, as we have seen, are now issued by the Clerk of the Crown in Chancery, and the remainder of the business of the Office was transferred to the senior clerk of the Crown Office Department of the Central Office by a Rule, dated January 30, 1889 (St. R. & O. Rev., Vol. 12, p. 931).

The practice in the Office, now so transferred as aforesaid, is governed by the Petty Bag Act, 1849 (12 & 13 Vict. c. 109), ss. 29, 30, 31, 45

(the remainder of the Act was repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54)), and by the Petty Bag Rules of December 29, 1848, made under a repealed Act, 11 & 12 Vict. c. 94. These are respectively printed below, pp. 663, 746.

The King's Bench Seal is now used in the Office instead of the Chancery Common Law Seal.

Amendment.

No proceeding or inquisition is to be quashed or avoided by any omission or informality which can be supplied or amended, and the Court or a judge may, on motion or summons, make any amendment or direct any proceedings which may be just. A direction may also be given that the inquisition shall stand good, notwithstanding any defect specified in the direction. The direction is to be endorsed in the inquisition by the proper officer, and have effect as part of the inquisition. (Escheat Procedure Rule 17, p. 834.)

Melius Inquirendum.

By Escheat Procedure Rules 14, 15 (p. 834), a *melius inquirendum* under the same commission, as to the whole or any part of the matters specified in the commission, shall be awarded from time to time on the fiat of the Attorney-General, or the Lord Chancellor may in any case award a *melius inquirendum*. On such award the inquest is to be held *de novo*, except in so far as the award directs any former inquisition to stand good, and the proceedings are to be the same, *mutatis mutandis*, as on a first inquest. As to *melius inquirendum* generally, but subject to the above Rules, see the remarks on *melius inquirendum* in the case of extents, above, p. 198.

Objections to an Inquisition, otherwise than by Traverse.

The Crown Suits, &c. Act, 1865, s. 52 (p. 701), provides, with respect to inquisitions finding the title of the King in right of the Crown or of the Duchy of Cornwall, or of the Prince of Wales and Duke of Cornwall, to any real property, that any person, on whom an inquisition is served, and who thinks himself aggrieved by any finding therein, may within six months after service, or within such enlarged time as the Court allows, file a statement in writing of his objections in the office in which the inquisition is filed. The Court may then, on application on behalf of the Crown or the Prince of Wales, appoint a fit person to hold an inquiry, with power to summon witnesses and administer oaths, on notice to the objector. The return in writing of such person is to be filed in the office in which the

inquisition is filed, and the inquisition is to be deemed to be altered in accordance with such return.

These provisions do not affect any person's right to traverse the inquisition.

Re-grant of Escheated Property by the Crown.

1 Ann. c. 1 (st. 1, c. 7, Ruff.), s. 8, preserves the Crown's right, in spite of the provisions of that Act, to grant or restore any estates forfeited, seized on outlawry, or taken in execution. By the Crown Lands Act, 1819 (59 Geo. III. c. 94), s. 1, where the King has become entitled to freehold or copyhold hereditaments by escheat, or forfeiture, or purchase by or for the use of aliens, he may, by warrant under his sign manual, or under the seal of the Duchy of Lancaster, direct the execution of any trusts to which such hereditaments have been directed to be applied, and may make grants of such hereditaments or of any rents or profits then due to him to trustees for the execution of such trusts, or to any person for the purpose of restoring them to any of the family of the person to whom they had belonged, or of carrying out any intended grant or devise of any such person to whom they had belonged, or of rewarding any person or his family making discovery of such escheat or of the King's title, as the King thinks fit.

Such grant may be unconditional, or in consideration of money to be paid at or before the execution of the grant or subsequently and to such person as the King directs. Such money, if not paid at the execution of the grant, is to be a charge on the hereditaments, and to be secured as the King thinks proper. The King may also grant the hereditaments to a trustee for sale.

The rents and profits and the proceeds of sale or other moneys arising as aforesaid are to be applied to the expenses of the commission to find the King's title, and of the making of the grant and the carrying out of any provisions thereof, or in rewarding the discoverer, or in discharging any debts of the person to whom the hereditaments belonged, or for the use and benefit of such person or his family, as the King thinks fit.

By sects. 2 and 3 purchasers are not to be answerable for the application of the purchase-money, and any surplus is to be paid to the Commissioners of Woods and Forests.

The Crown Lands Act, 1825 (6 Geo. IV. c. 17), extends these provisions to leaseholds, and the Crown Lands Act, 1829 (10 Geo. IV. c. 50), s. 127, extends them to Ireland.

The Civil List Act, 1837 (1 & 2 Vict. c. 2), by s. 11, is expressed not to affect these powers, except that the moneys accruing to the

Crown after the full and free exercise of such powers are to be carried to the Consolidated Fund, and by the Civil List Act, 1901 (1 Edw. VII. c. 4), s. 1, these moneys during the present reign and for six months afterwards are to be paid into the Exchequer and made part of the Consolidated Fund.

The Intestates Estates Act, 1884, s. 6 (p. 736), enables the Crown to waive its rights to escheated property in favour of any person to whom it would, after inquisition, have had power to grant it. The waiver is to be made by Treasury warrant, which is to specify the terms on which the waiver is made, and the Treasury Solicitor thereupon may convey the property. But subject to these last provisions, no grant may be made of any real estate alleged to be escheated until after the return of the inquisition. (Escheat (Procedure) Act, 1887, s. 2 (3), p. 738.)

For the earlier and now repealed provisions as to the grant of escheated estates, see below, p. 437.

A fee of 18*l.* is stated to be payable on a grant of escheated lands by an Order of July 18, 1871 (St. R. & O. Rev., Vol. 2, Clerk of the Crown in Chancery, p. 3).

It was stated by Lord Eldon, L.C., in *Moggridge v. Thackwell* (1803), 7 Ves. 36, 71, that where the fact of escheat or accruer of the King's interest had not come to the King's knowledge, it was usual to petition the King, stating the fact and praying some reward for the discovery; and that the ordinary rule was for the Crown to give as good a lease as it could give to the person making the discovery.

In *Cumming v. Forrester* (1820), 2 J. & W. 334, A. and B. had joined in a petition to the Crown representing an estate to have escheated and praying a grant to themselves. The Crown granted the property to trustees in trust for sale, and after paying funeral expenses to pay over half to A. and invest the other half for the benefit of B. It was held that A. could not afterwards set up a claim to the former half under a prior title in himself, while taking the benefit of the grant as to the rest.

In *Mason v. A.-G. of Jamaica* (1843), 4 Moo. P. C. 228, there had been a grant of escheated property, subject to the grantee's taking within twelve months the necessary steps to prosecute the rights of the Crown thereto, otherwise the grant to be void. The grantee took possession and received the rents and profits but took no further steps. He was held liable to account to the Crown for the rents and profits.

Traverse.

The Petition for Leave to Traverse.

The old Escheat Acts have been repealed, but no rules for traverse have been made to take their place, and therefore, by sect. 3 (3) of the Escheat (Procedure) Act, 1887, the previously existing practice continues. (See also Escheat Procedure Rule 16, as to the right to traverse.)

It would appear that the original form of the petition was not so much a petition for leave to traverse as a petition that the Chancellor would grant the applicant a lease of the lands in question until judgment. 36 Edw. III. c. 13, provided that the escheator should make his return into Chancery within a month after the seizure of the lands into the King's hands, and that a claimant should "be heard without delay to traverse the office, or otherwise to show his right, and from thence sent before the King to make a final discussion, without attending other commandments." The Act then gave the Chancellor power, if the applicant showed good evidence of title, to demise the land to him till judgment.

8 Hen. VI. c. 16, 18 Hen. VI. c. 6, and 23 Hen. VI. c. 16 (c. 17, Ruff.), confirmed this, and provided that the traverser must give security that he would pursue the traverse with effect, and also that the King should not grant away the lands, except to a traverser, till the return of the inquisition and a month thereafter (extended to three months by 1 Hen. VIII. c. 10). As to these provisions, see *Doe d. Hayne v. Redfern* (1810), 12 East, 96. It was clearly necessary, in order that the Chancellor might grant such a temporary lease, that the applicant should show a *prima facie* title. This view of the matter is supported by *In re Cumming* (1852), 1 D. M. & G. 537; 21 L. J. Ch. 753. But whether the origin of the preliminary application was such as has just been suggested or not, undoubtedly there has prevailed a practice of applying in Chancery for leave to traverse, and on such an application it has been held necessary that the applicant should show a *prima facie* case, supported by evidence and not merely by his own affidavit. The cases, in which a discussion of the evidence required will be found, are *E. p. Webster* (1802), 6 Ves. 809; *In re Sadler* (1816), 1 Madd. 581; *E. p. Lord Gwydir* (1819), 4 Madd. 281; and *In re Ann Parry* (1866), L. R. 2 Eq. 95; 35 L. J. Ch. 651. In the last-named case the statement attributed to Stuart, V.-C., that the Court had jurisdiction not merely to give leave to traverse but also wholly to quash the inquisition appears to the author to be quite unfounded, and it is, moreover, contrary to the statement of Leach, V.-C., in *E. p. Lord*

Gwydir, *ubi sup.*, at p. 313, that the Crown may apply to quash an inquisition, but the subject cannot, and that he could not consider the petitioner's application to quash.

The practice, which has thus become established, is, as already mentioned, still in force, unless and until rules are made under the Escheat (Procedure) Act, 1887, abolishing it. It was, in fact, employed in the two most recent cases of traverse of escheat since the Act of 1887, *R. v. Westmacott* (1900), and *R. v. Manning* (1902), neither of which is reported. Reference may also be made to four earlier cases (not reported) in which such a petition was successfully made, viz., *R. v. Kane* (1852), the order in which case will be found in L. R. 2 Eq. 96, n.; 35 L. J. Ch. 651, n.; *R. v. Crossfield* (1877), *R. v. Slagg* (1877), and *R. v. Carlisle Corporation* (1886).

The petition should be in a form similar to that printed below, p. 451. It must set out concisely the alleged title of the petitioner, and must be supported by affidavits and documents sufficient to enable the Court to hold that a *prima facie* case has been made out. It is served on the Treasury, who are usually represented in Court, and who should then take any appropriate point, such as one of limitation, which it desires to press against the petitioner.

The modern form of order giving leave to traverse is printed below, p. 452. It is filed in the Crown Office Department.

The Traverse.

After obtaining leave as aforesaid, the traverser prepares his traverse. In drafting this the traverser must bear in mind the fact that the statutes relating to pleading do not apply, and that he is subject to the prerogative of the Crown in the matter of pleading; that, in particular, he may not plead double, and that he must show title in himself in order to defeat the title of the Crown. These matters are dealt with below, p. 563. In *R. v. Slagg* (1886), not reported, on a traverse of an inquisition of escheat, Pearson, J., decided that the traverser could not plead both that she was heiress-at-law in fact, and also that she had been found heiress in certain Chancery proceedings.

In *R. v. Kane* (1852), not reported, the transcript of the shorthand note describes Lord Campbell, C.J., as saying that the traverser need not prove a perfect title, so long as he proves a better title than the Crown. *Sed quære strenuissime.*

The form of traverse sufficiently appears from the precedent printed below, p. 454. Old forms will be found in Trem. P. C. 617. The traverse is usually signed by counsel. The title, it will be noted, is still "In the Petty Bag (In Chancery)." *Quære* whether this title

might not be amended with advantage, in view of the abolition of the Petty Bag Office. (See above, p. 433.)

The traverse must be filed in the Crown Office Department of the Central Office, and a copy must be delivered to the opposite party (Petty Bag Act, 1849 (12 & 13 Vict. c. 109), s. 30, p. 664). The fee for filing is 2*l.*, and 10*s.* for entering appearance for every defendant. It seems probable that the traverser must now be considered to be in the position of a defendant, and not of a plaintiff. This seems to be logical, the inquisition being regarded as the Crown's plea. It is pointed out by Chitty, *Prerog.* 354—356, that the earlier authorities were to the contrary; but Lord Somers' argument in *The Bankers' Case* (1700), 14 St. Tr. 1, stated: "When upon a title found for the King by office the subject comes in to traverse the King's title, or to show his own right, he comes in in the nature of a defendant; and is admitted to interplead in that case with the King in defence of his title, which otherwise would be defeated by finding the office," and that in a *monstrans de droit* "the subject is in the nature of a defendant, and comes in and pleads to a title found for the King." *R. v. Roberts* (1744), 2 Stra. 1208, supports this, though some of the expressions in the judgment are not satisfactory. The somewhat confused treatment of the matter in Manning, *Exch. Pr.* (ed. 2), pp. 87, 88, 105, appears to be contrary to this view; but his reasoning does not convince, and he does not take sufficient note of the fact that the inquisition is an integral part of the pleadings and record; that the traverse, after setting out the inquisition, protests that the traverser is not bound to answer the inquisition, sets up the traverser's title, concludes that "without this" the property properly escheated to the Crown, and then prays judgment. In a matter of this kind the form of the pleadings is clearly of the greatest importance in deciding whether a person is plaintiff or defendant. Finally, in *R. v. Carlisle Corporation* (1888), not reported, Day, J., ordered the traversers to pay the Crown's costs under the Crown Suits Act, 1855, s. 1 (p. 673), and this he could not have done unless he had regarded the Crown as plaintiff. The matter, it is true, was scarcely argued, but the costs were very heavy, and the traversers took no steps to appeal against this decision. And in *R. v. Slagg* (1886), not reported, Pearson, J., said: "If I can form any opinion, after hearing the argument on both sides, I shall be inclined to come to the conclusion that the traverser is rather in the position of defendant than in that of plaintiff. It appears to me that the Crown having seized has allowed Mrs. Slagg to come in to show her interest in the property that has been seized, and that is all."

Where the Crown has waived its rights, and conveyed the property to the person in whose favour the waiver is made, and if there has

been no application for an inquisition as provided by the section, a claimant bringing an action in respect of the property is to be in the same position and have the same right as if he were traversing an office found. (Intestates Estates Act, 1884, s. 6, p. 736.)

Pleadings subsequent to Traverse.

As to compelling the Crown to plead, see above, pp. 218, 394, and below, p. 562. Forms of replication and rejoinder are printed below, pp. 457—459.

The Petty Bag Act, 1849 (12 & 13 Vict. c. 109), s. 31 (p. 664), provides that no demurrer, nor any plea or pleading subsequent to the traverse, shall be filed in the Crown Office Department or in Chancery, but are to be delivered to the opposite party; and that the issue is not to be filed, but is to be made up and delivered by either party to the opposite party.

In *R. v. Kane* (1852), not reported, where the Crown's grantees were in possession of the escheated property, the Crown handed over the conduct of the proceedings to them, and allowed them to plead in the name of the Attorney-General on behalf of the Crown.

Such grantees should, in the ordinary course, have been brought in by a *scire facias* (see 2 & 3 Edw. VI. c. 8, s. 13); but since the repeal of the last-cited section, it is not quite clear whether this procedure can be adopted.

Confession.

A form of confession of the traverser's plea by the Attorney-General on behalf of the Crown is printed below, p. 459.

Trial.

Under the old (now repealed) statutes the case was sent into the King's Bench for trial (see 34 Edw. III. c. 14; 36 Edw. III. c. 13), and this is the course which is still to be adopted, as in the last contested case, *R. v. Manning* (1902), not reported. The trial would naturally be before a judge and jury, but it is obvious that a jury is not the best tribunal for deciding a complicated question of pedigree, and therefore in *R. v. Manning*, by consent of both sides, and on application to the judge, the issue was ordered to be tried by a judge alone.

The author has already expressed the opinion (p. 429) that the trial of the issues is to be conducted in the same way and under the same rules as the trial of any ordinary issues in the King's Bench Division, subject to the prerogative possessed by the Crown in litigation (as to which see Book VI. of this work), and, if that be so, the question of trial with or without a jury, or by a common or special jury, is governed by R. S. C. Ord. XXXVI., and the other provisions

relating thereto, and the consent of both parties in *R. v. Manning* was unnecessary.

Apparently, however, any filing or lodgment of documents will be made in the Crown Office, and the official there who has succeeded the Clerk of the Petty Bag will have the superintendence of the proceedings.

As to affidavits in the Petty Bag Office, see the Petty Bag Act, 1849 (12 & 13 Vict. c. 109), s. 45, p. 664.

Witnesses should be summoned and a jury obtained, it is submitted, as in ordinary proceedings in the King's Bench Division, and not by the methods employed in the Crown Office.

In a recent case, a warrant of *tales* from the Attorney-General seems to have been thought necessary, as in a criminal case tried by a special jury, *sed quære*.

Notice of trial should be given and the case set down for trial, it would seem, by the Crown as plaintiff. In *R. v. Manning* it was done, wrongly, it is submitted, by the traverser.

There seems to be no precedent for consolidating the trial of two or more traverses of the same inquisition, but probably the Court would, on motion, stay proceedings on the other traverse or traverses till one was disposed of.

As to the prerogative right of the Crown to defer proving its title where there are several claimants, see below, p. 611.

It appears that the Court would, on motion by the Attorney-General, stay proceedings which were pending with respect to property, if, while such proceedings were pending, the property were seized into the King's hands under an inquisition, on the ground that the proceedings were thereby rendered nugatory and that the claimant was put to his traverse.

Judgment.

Various forms of judgment are printed below, p. 460. As to the effect of a judgment of *amoveas manus*, see p. 395.

Where the Attorney-General on behalf of the Crown confesses, the traverser may sign judgment at once in the form printed below, p. 460.

In *R. v. Kane* (1852), not reported, the traverser, having succeeded, did not proceed on the judgment to oust the Crown's grantees who were in possession, but proceeded against them in ejectment, and so got possession of the property.

Judgment must be entered in the Crown Office Department, and the record enrolled. The fee for preparing, engrossing and perfecting the exemplification of any record is 5*l.* 5*s.* for one skin and 1*l.* 6*s.* 8*d.* for every additional skin.

Costs.

See the article on costs on traverse of escheat in the general article on costs below, p. 621.

Appeal and Application for New Trial.

There is no modern instance of this. In *R. v. Lord Yarborough* (1828), 1 Dow & Cl. 178, a traverse of inquisition, the Crown applied for a new trial and, having failed, brought a writ of error. But if the author's view (p. 429) is correct, that the issues are tried, subject to the Crown's prerogative, like any other issues in the King's Bench Division, it will follow that the existing rules as to appeal and application for a new trial apply to proceedings on traverse of escheat.

Procedure in the Duchy of Lancaster.

The observations on the procedure in England and Wales may be taken to apply to the Duchy of Lancaster (but see the remarks above, p. 429), with the following variations and additions:—

The commission issues under the seal of the Duchy.

The petition for leave to traverse is presented to the Chancellor of the Duchy, and it is he who gives leave to traverse the inquisition.

The filing of the various proceedings is, apparently, in the Chancery of the Duchy of Lancaster.

The venue may be changed to Middlesex by an order of the Chancellor of the Duchy, and then a mittimus is issued to all the judges of the King's Bench Division. If it is not so changed, a mittimus under the seal of the Duchy, and signed by the Chancellor of the Duchy, is issued to the judges going the circuit, within the bounds of which the property is situate, for the next assizes. A form of mittimus is printed below, p. 461.

The record is enclosed in the mittimus and lodged with the associate or clerk of assize, who then sets down the issues for trial.

Enlargement of time and other interlocutory matters are, apparently, dealt with by order of the Chancellor of the Duchy.

The Intestates Estates Act, 1884, is applied by s. 8 (p. 736) to the Duchy of Lancaster, with the substitutions therein described.

Instances of proceedings of traverse in the Duchy have been *In re Moreton* (1872) and *In re Harrison* (1877), neither of them reported. In the former, there was a verdict for the traverser; in the latter, the case was referred by the Court to a commissioner to take evidence and state a special case, on which judgment was given for the Duchy.

CHAPTER III.

MESNE PROFITS AND ISSUES.

THERE is no doubt that the King, on his title being found to hereditaments, is entitled to the mesne profits thereof from the moment when his title accrued. This is stated by Staundford, Praerog. 84 b, and has never been questioned.

The question whether a person recovering hereditaments from the King by traverse of office or petition of right, or by simple livery, is entitled also to be paid the profits thereof, which the Crown has taken during its possession, is more difficult. 28 Edw. I. c. 19, provides: "From henceforth, where the escheator or the sheriff shall seise other men's lands into the King's hands (where there is no cause of seiser), and after, when it is found no cause, the profits (in the French 'issues') taken in the meantime have been still retained, and not restored, when the King hath removed his hand; the King will, that if hereafter any lands be so seised, and after it be removed out of his hands by reason that he hath no cause to seise nor to hold it, the issues shall be fully restored to him to whom the lands ought to remain and which hath sustained the damage."

A similar provision in the case of escheat was to be found in 29 Edw. I., repealed by the Escheat (Procedure) Act, 1887, s. 3 and Sched. (p. 738). These provisions seem plain enough, but Coke (2 Inst. 272) makes ten points upon them, of which the following are here material:—1. By the common law, although the seizure was not lawful, yet for the mesne profits upon the livery or *ouster le main* the party grieved was not restored to the mesne profits, which mischief is remedied by these two statutes. 2. Issues are intended rents and things leviab^{le} by the escheator, which may be restored, though the escheator has accounted for them, and not paid; but the money being once in the King's coffers shall not be restored. 3. Though both these statutes speak only of an *ouster le main*, yet being both beneficial laws for restitution to be made to the party aggrieved, by equity they extend to liveries. 4. Where the words seem to extend only to seizures before office, and after by the office that is found the King is not entitled, yet by construction the same extend only [*quare* also] to seizures after office found. 5. These statutes extend by equity to

ouster le main and *amoveas manus* upon petitions and *monstrans de droits*, not only in cases concerning wardship, but freehold and inheritance. 6. These statutes extend also, by like equity, to *ouster le mains* upon traverses, although traverses were not in use at the time of the making of these statutes.

It will be seen that Coke is of opinion that the statutes extend to recovery of property from the Crown by any of the means by which a person could recover property, and his remarks apply equally well in spite of the repeal of 29 Edw. I. "Issues," also, seems to cover more than rents and the like; the word even includes the cattle of a stranger upon the land (*Britton v. Cole* (1698), Comb. 434, 469); and in 13 Edw. I. c. 39 (now repealed), it is expressed to include rents, corn in the grange, and all moveables, except "*equitaturam, indumenta et utensilia domus*."

But Coke further introduces the distinction, which is not to be found in 28 Edw. I. c. 19, though perhaps it might be read by implication into the repealed statute 29 Edw. I., between issues which have already been paid into the King's coffers and issues which have not. This distinction seems to make its first reported appearance in *Roose's Case* (1351), Y. B. T. 24 Edw. III. pl. 16, where it was said: "*Que le livrer des issues sera seulement entendu de rents et choses leviable par l'escheator, queux seront livrés, mes que l'escheator eit accompt de eux, et non pas païés. Mes dit fuit que les deniers in cofres le Roy ne seront pas livrés, etc.*" Com. Dig. Praerog. D. 82, appears to follow the statute without noticing the limitation placed upon it by Coke, saying: "There shall be judgment also for the mesne issues and profits: Stanf. Praer. 71a"; but Bacon, Abr. Prerog. E. 7, p. 477, adds the qualification: "The judgment is *quod manus domini regis amoveantur*, and that the party be restored to the possession of the premises with the appurtenances together with the mesne profits to the time of the caption of the inquisition not answered to the Crown, *salvo jure domini regis*, added by 2 & 3 Edw. VI. c. 8 [now repealed]; Co. Ent. 404, 406 b; Finch's Law, 459 a, 460; 2 Inst. 695; Keilw. 158 a." Finch's Law, 325, has: "If the office be for personal goods, the party may always have a traverse or plead any matter unto it, and so have his goods again, unless the escheator have accounted for them."

And there is much other authority to the same effect. In Lord Somers' argument in *The Bankers' Case* (1700), 14 St. Tr. 1, 71, we find: "When once money has been paid into the receipt of the Exchequer, no Court has any power over it, nor is there any legal method to fetch it back again, although, in several cases, if it had not been actually paid into the receipt, it might have been restored to the

party. . . . When upon an office or inquisition a title is found for the King and the mesne profits are paid into the receipt, if upon a traverse or *monstrans de droit* judgment be afterwards given for the subject, and an *amoveas manus* awarded, yet as to profits paid into the receipt there shall be no restitution." He then criticises the suggestion that there is some difference between a judgment on a petition of right and a judgment on a traverse or a *monstrans de droit* in this matter, and continues: "If the profits remain in the tenant's hands, or if they are *in transitu* in the hands of the receivers, though the receivers have accounted for them, the party is restored to them; but if they are answered into the receipt they are lost to him." He concludes by asserting that in no instance recorded, where mesne profits were restored by judgments on a traverse or *monstrans de droit*, was there any sign that such profits had already been paid into the Exchequer. To a similar effect is *A.-G. v. Waring* (1658), Hard. 147, 366.

In *Burgess v. Wheate* (1759), 1 Eden, 177, 188, we find: "The judgment, if the subject succeeds, is *amoveat manus*, but he loses the intermediate profits which are accounted for in the Exchequer. . . . The office is circuitous, expensive, and attended with the loss of mesne profits to the subject."

Mr. Edward Law (afterwards Lord Ellenborough, C.J.) advised to the same effect in 1800.

The Court, in *Oldham v. Lords of the Treasury*, cited 6 Sim. 220, said: "The jurisdiction of the Court of Exchequer extends only to the reaching the monies which come into the Treasury while they are *in transitu*; but, after Parliament has disposed of them and they have reached their destination, the jurisdiction of the Barons ceases; and here the King alone can order the payment of the money. The money is granted to the King, his successors and assigns; and the King himself must be sued by petition of right, if this money is to be got at."

In *A.-G. v. Köhler* (1861), 9 H. L. C. 654, 663, Rolt and Palmer *arguendo* said: "If the heir-at-law afterwards appears and makes good his claim, the only judgment is *amoveas manus*, which carries in favour of the claimant all the rents and profits not actually received by the Crown, but those which have actually been received are irrecoverable."

In *Tobin v. R.* (1864), 16 C. B. (N. S.) 310, 359; 33 L. J. C. P. 199, 208, the Court suggested that it was likely that the above rule would not prevail if the question arose now.

It now remains to mention what has actually been done in recent cases where there has been a judgment of *amoveas manus*. In *R. v.*

Kane (1852), not reported, a traverse of escheat, the property had been sold by the Commissioners of Woods and Forests. The heir-at-law established his claim, and the Crown returned to the purchaser his purchase-money, and paid him the money laid out by him in repairs and improvements on the property since his purchase and also his law costs. Apparently no mesne profits had been taken by the Commissioners, and no interest was allowed to the purchaser on his purchase-money.

In *In re Gosman* (1880), 15 Ch. D. 67 ; 49 L. J. Ch. 590, a petition of right to recover leaseholds, the petition also prayed an account of rents received by the Treasury Solicitor, and the Crown did not contest the account, although the money had been paid into the Exchequer; but the Court also awarded interest upon the rents and profits received. The decision as to interest, however, was reversed (1881), 17 Ch. D. 771 ; 50 L. J. Ch. 624.

In *R. v. Smelt* (1890), not reported, a traverse of escheat, there was no order as to mesne profits, but by arrangement the Crown retained 200*l.* out of them for its costs, and paid the balance to the traverser.

In *R. v. Westmacott* (1900), not reported, the Crown confessed, and offered the traverser the mesne profits from the date of the filing of the petition for leave to traverse. A subsequent petition on behalf of the traverser to the Treasury for the restoration of all the mesne profits since seizure was not granted.

An inspection of all these authorities seems to show that the objection to the recovery of mesne profits and issues which had actually gone into the King's coffers was one of procedure rather than of substance. The decisions do not allege that the King stood in any privileged position with regard to such profits as were still *in transitu*, or in such a position that they could be readily paid over to the person who had proved his title; they only point out the absence of machinery for recovering profits which were no longer in such a position. The Petitions of Right Act, 1860, now provides machinery for this purpose, and under these circumstances it certainly appears to the author that the basis of the decisions cited has no longer any substantial validity (see, in particular, the remarks of the Court in *Oldham v. Lords of the Treasury* and *Tobin v. R.*, above).

If the objection were one of substance and not of procedure, this would not be so, since the Act of 1860 does not enlarge the rights of the subject against the Crown (see above, p. 367). But it appears to the author that at the present day, if the Crown took the objection on a traverse of escheat, it would be open to the successful traverser to claim the mesne profits by petition of right (see as to this, in

addition to the above authorities, *Sir John Rigley's Case* (1429), Y. B. T. 7 Hen. VI. pl. 22); and, if that be so, the Crown's objection would be practically nugatory, and it would be scarcely worth while, except as a matter of strict practice, to make it.

These observations are subject to any question of limitation which the Crown may be entitled to raise; but it appears to the author that the principle of *Rustomjee v. R.* (1876), 1 Q. B. D. 487; 2 Q. B. D. 69; 45 L. J. Q. B. 249; 46 L. J. Q. B. 238 (see p. 393), applies to traverse of office as well as to petition of right.

APPENDIX OF PRECEDENTS.

Special Commission of Escheat.

EDWARD THE SEVENTH by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith to Greeting. Whereas We have been given to understand that formerly of died on the day of 19 being at the time of h death seised of an estate in fee simple in possession of and in divers messuages lands tenements and hereditaments of the estimated value of £ and that the said died without having devised the said messuages lands tenements or hereditaments or any of them or any estate or interest therein whereby the said messuages lands tenements and hereditaments whereof the said died so seised as aforesaid devolved unto Her late Majesty Queen Victoria as an escheat by virtue of the Prerogative Royal and have since descended and come to Us in right of Our Royal Crown We therefore being willing to be certified of the truth of all and singular the premises and very much confiding in your fidelity and prudent circumspection have assigned you to be Our Commissioners in this behalf and by the tenour of these presents do give to you or any one or more of you full power and authority to enquire as well by the oath of good and lawful men of Our County of as well within liberties as without by whom the truth of the premises may be better known and if it shall be necessary by the examination of credible witnesses upon their corporal oaths or their lawful affirmations to be taken before you or any one or more of you which oaths and lawful affirmations We do hereby authorize and empower you or any one or more of you to administer as by all other ways means and methods whereby you or any one or more of you may or can know or be informed whether or not the said *was a bastard and whether he died intestate* [where it is not a case of bastardy substitute for the words in italics *died without leaving any heir of his body or any right heir him surviving and intestate*] and of such matters and things in relation thereto as to you or any one or more of you shall seem fit and whether he was in h lifetime and at the time of h death seised of an estate in fee simple of and in divers or any and what messuages lands tenements and hereditaments situate lying and being in Our said County of or seised of or entitled to any other and what estate therein and under what deed or deeds will or wills writing or writings or by what other title or titles and when and where he died and whether he died without leaving any heir of his body or any right heir him surviving and without having devised the said messuages lands tenements and hereditaments or any of them or any part thereof or any estate or interest therein and of what yearly value the said messuages lands tenements and hereditaments were at the time of the death of the said and of what person or persons and by what services the same were then holden and whether the same devolved unto Her

said late Majesty as an escheat by virtue of the Prerogative Royal and have since descended and come to Us in right of Our Royal Crown and who hath received and taken the mesne profits thereof since the death of the said and to what amount and in whose possession tenure or occupation the same now are or remain and also of all other matters and circumstances which you or any one or more of you shall judge fit and necessary to be enquired of touching the premises and the said messuages lands tenements and hereditaments which on the death of the said unto Us ought to devolve and belong to take and seize into Our hands And therefore We command you that at such day and place or days and places as you or any one or more of you shall appoint for that purpose you or any one or more of you diligently set about the premises and do and execute all and singular the matters aforesaid with effect so that as well the inquisition as all other matters by you or any one or more of you taken and done in the premises you or any one or more of you send and certify to Us into the Central Office of Our Supreme Court of Judicature under your hands and seals or the hand and seal or hands and seals of any one or more of you present at the said inquisition and the hands and seals of the jurors concurring therein distinctly and openly without delay together with these Our Letters Patent We also give full power and authority to you or any one or more of you to call and procure to appear before you or any one or more of you all persons whomsoever fit to be examined in the premises and their examinations they having been first duly sworn before you or any one or more of you to receive and take And We also by the tenour of these presents command Our Sheriff of Our said County of that at a certain day and place or certain days and places which you or any one or more of you shall appoint for that purpose and on our part make known to him he cause to come before you or any one or more of you so many and such good and lawful men of his bailiwick as well within liberties as without by whom the truth of the matter in the premises may be known and enquired into and We also by the tenour of these presents strictly command all and singular Justices Mayors Sheriffs Bailiffs Officers Ministers and all other Our faithful subjects of Our said County of as well within liberties as without that to you in the execution of these presents they be attendant obedient aiding and assisting in such manner as you or any one or more of you shall make known to them on Our behalf In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the day of in the year of Our Reign

By Warrant from the Attorney-General,

MUIR MACKENZIE.

Inquisition.

to wit. } An Inquisition taken at situate at in the County of
 } on the day of in the year of the reign of
our Sovereign Lord Edward the Seventh by the Grace of God of the United
Kingdom of Great Britain and Ireland and of the British Dominions beyond
the Seas King Defender of the Faith before
Commissioners of our said Lord the King by virtue of His Majesty's Com-
mission under the Wafer Great Seal of the United Kingdom of Great Britain

and Ireland bearing date at Westminster the day of in the year of His Majesty's reign and to this Inquisition annexed to us and others in the Commission named directed commanding us or any one or more of the Commissioners aforesaid to enquire on behalf of our said Lord the King of divers matters things and circumstances in the said Commission specified upon the oath of

good and lawful men of the said County of who being sworn and charged to enquire touching the matters in the said Commission mentioned do on their oath say that under and by virtue of an Indenture of Conveyance bearing date the day of and made between of the one part and in the said Commission named of the other part the said in the said Commission named was in h lifetime and at the time of h death seised in fee simple of and in All that Freehold messuage or dwelling-house situate And the Jurors aforesaid on their oath aforesaid do further say that the said in the said Commission named *was a bastard and* [*insert the words in italics in a case of bastardy*] being so seised and entitled as aforesaid departed this life on the day of at in the said County of *without leaving any heir of h body or any right heir h surviving and* [*omit the words in italics in a case of bastardy*] without having devised the said messuage lands tenements hereditaments and premises or any of them or any part thereof or any estate or interest whatsoever therein And the Jurors aforesaid upon their oath aforesaid further say that the messuage lands tenements hereditaments and premises above described and mentioned were at the time of the death of the said of the yearly value of £ in all issues thereof beyond reprises and are now in the occupation of and were holden of Her late Majesty Queen Victoria in free and common socage but not subject to any rent or service in respect thereof except fealty and by reason of the premises devolved to Her said late Majesty as an Escheat by virtue of the Prerogative Royal and have since descended and come to His present Majesty in right of His Royal Crown And that the mesne profits of the said messuage lands tenements and hereditaments and premises since the death of the said to the day of amounting to the sum of £ have been received and taken by

All which said messuage lands tenements hereditaments and premises whereof the Jurors aforesaid find the said to have died seised and to have escheated to Her late Majesty and to have since descended and come to His present Majesty We the Commissioners aforesaid have in obedience to the said Commission taken and seised into the hands of His said Majesty.

In Witness whereof as well the said Commissioners as the Jurors aforesaid have set their hands and seals to this Inquisition to be returned into the Central Office of the Supreme Court of Judicature of our said Lord the King the day and year and at the place above written.

[Signed and sealed by the Commissioners and Jurors.]

Petition for Leave to Traverse Inquisition.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice North.

[27 December 1899.—The Court doth order that all parties concerned do attend herein on Saturday the 20th day of January 1900. And hereof give notice forthwith.—L. L. PEMBERTON.]

In the Matter of an Inquisition held on the 11th day of August 1877 in respect of certain Freehold Property part of the Estate of Bevil Amyas deceased.

To HER MAJESTY'S HIGH COURT OF JUSTICE.

The Humble Petition of William Woodward Manning Esquire Barrister-at-Law of Veytaux Canton de Vaud Switzerland

Sheweth as follows:—

1. By a certain inquisition taken at on before the Commissioners named therein by virtue of Her Majesty's Commission under the Wafer Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminster the it was found by the Jurors upon their oath that [*the findings of the jury set out*].

2. In obedience to the said Commission the said Commissioners named therein seized into the hands of Her Majesty all the said messuages or tenements farm lands hereditaments and premises or such part thereof as was freehold.

3. Your Petitioner was a third cousin thrice removed of the said Bevil Amyas and the said John Amyas mentioned in the said inquisition and your Petitioner alleges that upon the death of the said Bevil Amyas and thence until and at the time of the taking of the said inquisition the said messuages or tenements farm lands hereditaments and premises in the said inquisition mentioned devolved and belonged to your Petitioner who upon the death of the said Bevil Amyas became and now is the heir-at-law of the said Bevil Amyas and also of the said John Amyas.

4. Your Petitioner had no knowledge of the holding of the said inquisition until several years after the same had been held.

5—42. [*The details of the pedigree and other facts by which the Petitioner alleged that he was the heir-at-law of the last holder of the escheated property.*]

43. In the circumstances hereinbefore set forth your Petitioner is now and has been since the death of the said Bevil Amyas the heir-at-law of the said John Amyas the said brother of the said Bevil Amyas and is entitled to the seisin in fee of the said messuages or tenements farm lands hereditaments and premises in the said inquisition mentioned.

Your Petitioner therefore humbly prays:—

1. That he may be at liberty to traverse the said inquisition.
2. In the alternative that an inquiry may be directed who was the heir-at-law of the said Bevil Amyas at the time of his death and whether such heir is living or dead and if dead who by devise descent or otherwise is entitled to such real estate of the said Bevil Amyas as descended to such heir-at-law.
3. Or that such further or other Order may be made in the premises as to this Honourable Court shall seem fit.

And your Petitioner will ever pray &c.

NOTE.—It is intended to serve this Petition on the Lords Commissioners of Her Majesty's Treasury.

Order giving Leave to Traverse.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice Cozens-Hardy.

Mr. Carrington, Registrar.

Saturday the 8th December 1900.

In the Matter of an Inquisition held on the 11th day of August 1877 in respect of certain Freehold Property part of the estate of Bevil Amyas deceased.

Upon the Petition of Emily Manning of Veytaux Canton de Vaud Switzerland preferred unto this Court and upon hearing counsel for the Petitioner and for Her Majesty's Attorney-General and upon reading the said Petition the inquisition of escheat in the said Petition mentioned taken on the 11th August 1877 and the return thereon the affidavits of and the exhibits therein referred to and the letters of administration with the will annexed of William Woodward Manning granted on the 28th November 1900 to the Petitioner. [NOTE.—W. W. Manning the original Petitioner had died since the date of the Petition.]

This Court doth Order that the Petitioner be at liberty to traverse the said inquisition of escheat and return.

Record of Traverse of Escheat.

[*The most modern form of Commission and Inquisition is printed above, p. 448.*]
 Yorkshire } An Inquisition indented and taken at the House called or known
 } to wit. } by the name of the Great Northern Railway Station Hotel situate
 at Leeds in the County of York on Saturday the 17th day of March in the
 40th year of the Reign of our Sovereign Lady Victoria by the Grace of God
 of the United Kingdom of Great Britain and Ireland Queen Defender of the
 Faith Before John Blossett Maule Esquire one of Her Majesty's Counsel
 learned in the Law and Alfred Trevor Crispin Esquire Commissioners of Our
 said Lady the Queen by virtue of Her Majesty's Commission under the Great
 Seal of the United Kingdom of Great Britain and Ireland bearing date at
 Westminster the 19th day of May in the 39th year of Her Majesty's Reign and
 to this Inquisition annexed to us and others in the said Commission named
 directed commanding us or any one or more of the Commissioners aforesaid to
 enquire on behalf of our said Lady the Queen of divers matters and things
 and circumstances in the said Commission specified upon the Oath of [*here
 follow names of Jurors*] good and lawful men of the said County of York
 who being sworn and charged to enquire touching the matters in the said
 Commission mentioned do on their Oath say That Thomas Smelt late of Great
 Driffield in the said County of York deceased in the said Commission named
 was in his lifetime and at the time of his death under or by virtue of a Deed of
 Conveyance bearing date on or about the 5th day of April 1852 and made
 between William Jarratt of the first part James Lamplough of the second part
 and him the said Thomas Smelt of the third part seised in fee simple Firstly of
 and in All that close piece or parcel of ground situate lying and being in a
 certain place called Swine Pit Flat in the West Field of Great Driffield formerly
 described as containing by estimation 8a. 2r. 10p. or thereabouts but by a more

recent admeasurement thereof found to contain 9a. 3r. 30p. be the same more or less bounded on or towards the North by lands formerly belonging to George Danby but now the property of Edward Gibson on or towards the South by land late of Mrs. Dickinson but now of John Pickering on or towards the West by a Road called Spellow Gate leading to the West Field of Great Driffild and on or towards the East by land late of The Honorable Marmaduke Langley but now of The Right Honorable Mary Isabel Viscountess Downe Together with the appurtenances and under or by virtue of a Deed of Conveyance bearing date on or about the 5th day of April 1870 and made between George Thompson Ross of the one part and him the said Thomas Smelt of the other part was seised in fee simple Secondly of and in All that piece or parcel of land or ground measuring from North to South 14 yards and from East to West 29 yards and containing in the whole 400 square yards or thereabouts and which said piece or parcel of land forms the South West corner of a certain close or parcel containing by estimation 3 acres adjoining Beverley Lane in Great Driffild aforesaid lately the property of Mark Foley deceased And also All that messuage or dwelling-house with the outbuildings erected and built on the said piece or parcel of land by the said George Thompson Ross Together with the appurtenances And the Jurors aforesaid upon their oath aforesaid do further say That the said Thomas Smelt being so seised departed this life at Great Driffild on or about the 19th day of November 1871 without leaving any heir of his body or any right heir him surviving and without having devised the said messuages lands tenements hereditaments and premises or any of them or any part thereof or any estate or interest therein And the Jurors aforesaid upon their Oath aforesaid further say That the said messuages lands tenements hereditaments and premises Firstly and Secondly hereinbefore described were at the time of the death of the said Thomas Smelt of the respective yearly values of £34:2s. 6d. and £18 in all issues thereof beyond reprises and are now in the respective occupations of Francis Lovel and Arthur Henry Stott as tenants thereof and were holden of Her Majesty Queen Victoria in free and common socage but not subject to any rent or service in respect thereof except fealty and by reason of the premises devolved to Her Majesty as an escheat by virtue of Her Prerogative Royal and that as regards the premises firstly hereinbefore described the mesne profits thereof from the date of the death of the said Thomas Smelt to the 1st day of February 1877 amounting to the sum of £185:11s. 7d. have as to the sum of £170 part thereof been received and taken by the Solicitor for the Affairs of Her Majesty's Treasury and that there is now due from the said Francis Lovel in respect of the residue thereof the sum of £15:11s. 7d. or thereabouts and as to the property secondly hereinbefore described the mesne profits from the time of the death of the said Thomas Smelt to the 29th day of September 1876 amounting to the sum of £53:8s. 9d. have been received and taken by Johannah Smelt the Widow of the said Thomas Smelt And the Jurors aforesaid upon their Oath aforesaid further say That by reason of the premises the said messuages lands tenements hereditaments and premises with the appurtenances have devolved and now do belong to Her Majesty by virtue of Her Prerogative Royal all which said messuages lands tenements hereditaments and premises We the Commissioners aforesaid have in obedience to the said Commission taken and seized into the hands of Her said Majesty In Witness whereof as well the said Commissioners as the Jurors aforesaid to one part of this Inquisition to be returned into the Chancery of our said Lady the Queen have set their hands and seals and to one other

part of this Inquisition remaining with the said James Blakey the first person sworn of the said Jurors the said Commissioners have also set their hands and seals the day and year and at the place first above written.

[Signed and sealed by the Commissioners and Jurors.]

In the Petty Bag
(In Chancery).

The 28th day of May in the 52nd year of the Reign of our Lady Queen Victoria
and in the year of Our Lord 1889.

Yorkshire } By a certain Inquisition indented taken at the House commonly
to wit. } called or known by the name of the Great Northern Railway Station
Hotel situate at Leeds in the County of York on the 17th day of March in the
year of our Lord 1877 in the 40th year of the reign of our Sovereign Lady
Victoria by the Grace of God of the United Kingdom of Great Britain and
Ireland Queen Defender of the Faith before John Blossett Maule Esquire one of
Her Majesty's Counsel learned in the law and Alfred Trevor Crispin Esquire
Commissioners of our said Lady the Queen by virtue of Her Majesty's Com-
mission under the Great Seal of the United Kingdom of Great Britain and
Ireland bearing date at Westminster the 19th day of May in the 39th year of Her
said Majesty's Reign and to the said Inquisition annexed to them the said Com-
missioners and others in the said Commission named described commanding
them the said Commissioners or any one or more of them to inquire on behalf of
our said Lady the Queen of divers matters things and circumstances in the said
Commission specified upon the Oaths of [*here follow the names of the Jurors*]
good and lawful men of the said County of York It was found that Thomas
Smelt late of Great Driffield in the said County of York deceased in the said
Commission named was in his lifetime and at the time of his death under or by
virtue of a Deed of Conveyance bearing date on or about the 5th day of April
1852 and made between William Jarratt of the 1st part John Lamplough of the
2nd part and him the said Thomas Smelt of the 3rd part seised in fee simple
Firstly of and in all that close piece or parcel of ground situate lying and being
in a certain place called Swine Pit Flat in the West Field of Great Driffield
formerly described as containing by estimation 8a. 2r. 10p. or thereabouts but
by a more recent admeasurement thereof found to contain 9a. 3r. 30p. be the
same more or less bounded on or towards the North by lands formerly belonging
to George Danby but now the property of Edward Gibson on or towards the
South by land late of Mrs. Dickinson and now of John Pickering on or towards
the West by a road called Spellow Gate leading to the West Field of Great
Driffield and on or towards the East by land late of the Honorable Marmaduke
Langley now of the Right Honorable Mary Isabel Viscountess Downe together
with the appurtenances and under or by virtue of a Deed of Conveyance bearing
date on or about the 5th day of April 1870 and made between George Thompson
Ross of the one part and him the said Thomas Smelt of the other part was seised
in fee simple Secondly of and in all that piece or parcel of land or ground
measuring from North to South 14 yards and from East to West 29 yards and
containing in the whole 400 square yards or thereabouts and which said piece
or parcel of land forms the South West corner of a certain close or parcel of land
containing by estimation 3 acres adjoining Beverley Lane in Great Driffield
aforesaid lately the property of Mark Foley deceased And also all that messuage
or dwelling-house with the outbuildings erected and built on the said piece or

parcel of land by the said George Thompson Ross together with the appurtenances And it was further found that the said Thomas Smelt being so seized has departed this life at Great Driffield aforesaid on or about the 19th day of November 1871 and without leaving any heir of his body or any right heir him surviving and without having devised the said messuages lands tenements hereditaments and premises or any of them or any part thereof or any estate or interest therein And it was further found that the said messuages lands tenements hereditaments and premises firstly and secondly hereinbefore described were at the time of the death of the said Thomas Smelt of the respective yearly values of £34: 2s. 6d. and £18 in all issues thereof beyond reprises and were at the date of the said inquisition in the respective occupations of Thomas Lovell and Arthur Henry Stott as tenants thereof and were holden of Her Majesty Queen Victoria in free and common socage but not subject to any rent or service in respect thereof except fealty and by reason of the said premises devolved and did then belong to Her Majesty as an escheat by virtue of Her Prerogative Royal and that as regards the premises firstly hereinbefore described the mesne profits thereof from the date of the death of the said Thomas Smelt to the 1st day of February 1877 amounting to the sum of £185: 11s. 7d. had as to the sum of £170 part thereof been received and taken by the Solicitor of the Affairs of Her Majesty's Treasury and that there was then due from the said Francis Lovel in respect of the residue thereof the sum of £15: 11s. 7d. or thereabouts and as to the property secondly hereinbefore described the mesne profits from the time of the death of the said Thomas Smelt to the 29th day of September 1876 amounting to the sum of £53: 8s. 9d. had been received and taken by Johannah Smelt the widow of the said Thomas Smelt And it was further found that by reason of the premises the said messuages lands tenements hereditaments and premises with the appurtenances had devolved and did then belong to Her Majesty by virtue of Her Prerogative Royal as Her escheat All which said messuages lands tenements hereditaments and premises with the appurtenances so found by the said jurors to have escheated and devolved to Her Majesty the said Commissioners before named had in obedience to the said Commission seized into the hands of Her said Majesty as by the said inquisition together with the said Commission to the said inquisition annexed in the said Chancery here returned and on the files of the said Court here of record remaining more fully and at large appears.

And now here at this day that is to say on the 28th day of May in the 52nd year of the reign of our said Lady the Queen and in the year of our Lord 1889 before our said Lady the Queen in Her said High Court of Justice here to wit at the Royal Courts of Justice Strand in the county of Middlesex aforesaid comes Sarah Smelt by Albert Saunders her attorney and prays the hearing of the said Commission and the return to the same And also of the inquisition aforesaid and they are respectively read to her &c. and which being read and heard the said Sarah Smelt by her attorney aforesaid complains that she by color of the premises is greatly grieved and molested and she from the possession of the messuages lands tenements hereditaments and premises in the said inquisition mentioned and every part thereof by color of the said inquisition was and is held out and that unjustly because protesting that the Commission aforesaid and the inquisition aforesaid above taken are not sufficient in law and to which she has no necessity nor is she bound by the law of the land to answer for plea nevertheless the said Sarah Smelt says that at the time of the death of the said Thomas Smelt the said messuages lands tenements hereditaments and

premises in the said inquisition mentioned had devolved upon Christopher Anthony Smelt as heir-at-law of the said intestate Thomas Smelt as appears from the following Thomas Smelt late of Kirkby Fleatham in the county of York (hereinafter called Thomas Smelt the first) was born on the 18th May 1731 and was married once only namely to Elizabeth Pybus on the 23rd of August 1757 and died on the 8th of September 1783 The said Thomas Smelt the first had two sons and no more namely Christopher Smelt of Catterick in the county of York and John Smelt The said Christopher Smelt is the ancestor of the said Sarah Smelt testator The said John Smelt is the ancestor of the said Thomas Smelt the intestate The said Christopher Smelt was baptized on the 14th of March 1759 and was married once only to Margaret Watson on the 18th of October 1784 and died on the 22nd of December 1845 The said Christopher Smelt had five sons and no more namely John Smelt who was baptized on the 15th of July 1785 and who died on the 22nd of October 1814 a bachelor Thomas Smelt (hereinafter called Thomas Smelt the second) who was born on the 21st of May 1788 and Christopher Smelt James Smelt and William Watson Smelt who were born on the 12th of December 1791 the 14th October 1793 and the 18th of June 1797 respectively The said Thomas Smelt the second was married once only namely to Mary Dann on the 29th of October 1822 and died on the 7th of November 1843 The said Thomas Smelt the second had issue six sons and no more namely Thomas Dann Smelt who was born on the 24th of October 1823 and died on the 26th of October 1866 without issue Christopher Anthony Smelt who was born on the 9th of December 1825 John Dann Smelt who was born on the 16th July 1830 William Watson Smelt the younger who was born on the 14th September 1834 Henry Smelt who was born on the 30th December 1836 and Frederick Smelt who was born on the 13th May 1839 The said Christopher Anthony Smelt was twice married and no more namely first to Mary Ann Emma Faulkner on the 1st of May 1862 she died on the 8th of December 1865 without having ever had a child and secondly to your Petitioner (then Sarah Hambling spinster) on the 16th of October 1866 The said Christopher Anthony Smelt died on the 22nd of January 1872 having duly made his last will dated the 16th January 1872 and having thereby devised all his real and personal estate to your Petitioner absolutely and having appointed her and William James Hambling executors thereof The said John Smelt (son of the said Thomas Smelt the first) was baptized on the 7th of December 1765 and was married once only namely to Ann Brown on the 11th of June 1793 and died on the 1st of May 1839 The said John Smelt had issue three children and no more namely Francis Brown Smelt who was baptized on the 16th of November 1794 and buried on the 16th May 1817 having died without issue the said Thomas Smelt the intestate who died in November 1871 without issue and Hannah Brown Smelt who was buried on the 8th of October 1822 without having ever been married And the said Sarah Smelt further says that upon the death of the said Christopher Anthony Smelt on the 22nd January in the year of our Lord 1872 she the said Sarah Smelt as sole devisee and legatee under the will of the said Christopher A. Smelt became entitled to the said messuages lands tenements hereditaments and premises aforesaid together with the profits of the same since the death of the said Thomas Smelt the intestate and subject to the dower of his widow Johannah Smelt and the said Sarah Smelt says that by reason of the premises at the time of the taking of the said inquisition the said messuages lands tenements hereditaments and premises had devolved to the said Christopher Anthony Smelt and now do belong to the said Sarah Smelt Without this that

the said messuages lands tenements hereditaments and premises were at the time of the death of the said intestate Thomas Smelt holden of Her Majesty Queen Victoria in free and common socage but not subject to any services in respect thereof except fealty and did devolve to Her Majesty Queen Victoria by virtue of Her Royal Prerogative as an escheat as by the said inquisition it was found All and singular which the said Sarah Smelt is ready to verify as the said Court of our Lady the Queen shall now consider.

Wherefore the said Sarah Smelt prays judgment and that the said inquisition be quashed and that the hands of our said Lady the Queen be removed from the said messuages lands tenements hereditaments and premises and that she the said Sarah Smelt to the possession thereof and of every parcel thereof together with the issues proceeds and profits thereof from the time of the taking of the said inquisition and the said seizure of the said messuages lands tenements hereditaments and premises into Her Majesty's hands be restored.

[Signed by Counsel for the Traverser.]

REPLICATION.

And Sir Richard E. Webster Knight Attorney-General of our said Lady the now Queen who for our said Lady in this behalf sues being present here in Court in his proper person on the day of in the fifty-third year of the reign of our said Lady saith that by reason of anything by the said Sarah Smelt in the said traverse above alleged the said inquisition ought not to be quashed nor ought the hands of our said Lady from the said messuages lands tenements hereditaments and premises nor from any part thereof to be removed nor ought the said Sarah Smelt to be restored to possession thereof together with the issues proceeds and profits thereof and every part and parcel thereof from the time of the taking of the said inquisition aforesaid in the meantime received as in the plea of the said Sarah Smelt is prayed Because protesting that the said plea of the said Sarah Smelt and the matters therein alleged are not sufficient in law and that he the said Attorney-General is not bound by the law of the land to answer the same Nevertheless for plea in this behalf the said Attorney-General who sues as aforesaid for our said Lady the Queen says that the said messuages lands tenements hereditaments and premises in the said inquisition mentioned were at the time of the death of the said Thomas Smelt holden of our said Lady Queen Victoria in free and common socage but not subject to any rent or service in respect thereof except fealty and by reason of the premises devolved to our said Lady as an escheat by virtue of Her Prerogative Royal and in right of Her Crown in manner and form as in the said inquisition is found Without this that before and at the time of the death of the said Thomas Smelt the said messuages lands tenements hereditaments and premises in the said inquisition mentioned devolved upon Christopher Anthony Smelt as heir-at-law of the said intestate Thomas Smelt in manner and form as the said Sarah Smelt as above in her said plea in that behalf alleged And this he the said Attorney-General who sues as aforesaid is ready to verify Wherefore he prays judgment and that the said messuages lands tenements hereditaments and premises in the said inquisition mentioned may remain in the hands and possession of our said Lady the now Queen And for a further plea in this behalf the said Attorney-General who sues as aforesaid for our said Lady further saith that the said messuages lands tenements hereditaments and premises were at the time of the death of the said Thomas Smelt holden of our

said Lady Her Majesty Queen Victoria in free and common socage but not subject to any rent or service in respect thereof except fealty in manner and form as by the said inquisition is supposed and found And this he the said Attorney-General who sues as aforesaid prays may be enquired of by the country, &c. &c.

REJOINDER.

The 31st day of July 1889.

And the said Sarah Smelt by her said Attorney as to the said plea of the said Attorney-General for our said Lady the Queen firstly above pleaded in bar of the said plea of the said Sarah Smelt by way of traverse of the said inquisition above pleaded says that for and notwithstanding anything by the said Attorney-General for our said Lady the Queen in that plea alleged the said inquisition ought to be quashed vacated and discharged and that the hands of our said Lady the Queen ought to be removed from the possession of the said messuages lands tenements hereditaments and premises and that she the said Sarah Smelt ought to be restored to and rendered the possession thereof together with the issues proceeds and profits thereof and every parcel thereof from the time of the taking of the said inquisition and the said seizure of the said messuages lands tenements hereditaments and premises into Her Majesty's hands Because protesting that the said messuages lands tenements hereditaments and premises were not at the time of the death of the said Thomas Smelt holden of our said Lady Queen Victoria in free and common socage but not subject to any rent or service in respect thereof except fealty and that they did not by reason of the said premises devolve to our said Lady as an escheat by virtue of Her Prerogative Royal and in right of Her Crown in manner and form as in the said inquisition is found and in the said plea of the said Attorney-General is alleged for plea in that behalf the said Sarah Smelt says that at the time of the death of the said Thomas Smelt the said messuages lands tenements hereditaments and premises devolved upon the said Christopher Anthony Smelt as heir-at-law of the said intestate Thomas Smelt in manner and form as she the said Sarah Smelt has in her said plea in that behalf alleged and this she prays may be enquired of by the country And the said Attorney-General who sues as aforesaid doth the like and the said Sarah Smelt as to the plea of the said Attorney-General of our Lady the Queen lastly above pleaded in bar of the said plea of the said Sarah Smelt so by her by way of traverse of the said inquisition pleaded as aforesaid and which the said Attorney-General hath prayed may be enquired of by the country she the said Sarah Smelt doth the like.

REPLICATION.

(*Another Form.*)

[*As in the previous precedent down to the words "because protesting" on p. 457, and then continue as follows:*] Because protesting and not acknowledging anything by the said A. B. pleaded to be true the said Attorney-General of our said Lord the King who sues as aforesaid for our said Lord the King saith that the said C. D. was not the heir-at-law of the said E. F. and of the said G. H. as in the plea of the said A. B. alleged and this the said Attorney-General who sues as aforesaid prays may be enquired of by the country.

REJOINDER.

(Another Form.)

The 10th day of June in the 1st year of the reign of our Lord
King Edward VII. A.D. 1901.

And the said A. B. being here present before our said Lord the King in His said High Court of Justice by K. L. her said Solicitor on the tenth day of June in the first year of the reign of our said Lord as to the plea of the said Attorney-General for our said Lord the King above pleaded in bar of the said plea of the said A. B. by her by way of traverse of the said Inquisition above pleaded and which the said Attorney-General hath prayed may be enquired of by the country the said A. B. doth the like.

Confession of the Attorney-General.

In the Petty Bag
(In Chancery).

The 4th day of May in the 63rd year of the reign of Our Lady Queen Victoria
and in the year of Our Lord 1900.

The Queen
against } And Sir Richard Everard Webster Bart. the Attorney-General
Westmacott. } of our said Lady the Queen who for our said Lady the Queen
appears in this matter being present here in Court now to wit
on the 4th day of May the said 63rd year of the Reign of our said Lady the
Queen and having seen read and heard as well the said plea and traverse as the
said Inquisition and having fully understood the same and having a warrant
from the Right Honourable the Lords Commissioners of Her Majesty's Treasury
for his so doing saith for our said Lady the Queen that he having received full
information concerning the same doth not deny but that at the time of the
death of the said William Mann in the said plea named and thence until and at
the time of the taking of the said Inquisition the said messuages or tenements
and their appurtenances in the said Inquisition mentioned devolved and belonged
to the said Catherine Mary Moss as the second cousin and heiress-at-law of the
said William Mann and that at the time of the death of the said Catherine
Mary Moss that is to say on or about the 20th day of November 1877 the said
messuages or tenements and their appurtenances devolved and belonged to and
have since belonged to the said Arthur Young Seymour Westmacott as the
second cousin once removed and heir-at-law of the said William Mann in
manner and form as the said Arthur Young Seymour Westmacott hath in his
plea above alleged and he doth confess the said plea of the said Arthur Young
Seymour Westmacott in manner and form above pleaded in all things to be true.

RICHARD E. WEBSTER.

Judgment in favour of the Crown.

Afterwards on the seventh day of July in the year of Our Lord One thousand nine hundred and two and in the 2nd year of the reign of Our said Lord the King before the Honourable Sir John Charles Bigham, one of the Judges of His Majesty's High Court of Justice and as well the said Attorney-General of Our said Lord the King who for Our said Lord the King in this behalf prosecuteth as the said Emily Manning by her Counsel in Court Whereupon all and singular the premises being seen and fully understood by the said Court of Our said Lord the King now here it is considered and adjudged by the said Court here that the said Inquisition be not quashed and that the hands of Our said Lord the King be not amoved from the said messuages lands tenements hereditaments and premises in the said Inquisition mentioned, but that the same remain in the hands and possession of Our said Lord the King together with the issues proceeds and profits thereof And that the said Emily Manning pay Our said Lord the King His costs of the proceedings to traverse the said Inquisition to be taxed.

Judgment of Amoveas Manus.

After Trial.

[*As in the last precedent down to "adjudged by the said Court here," and continue*] that the said Inquisition be quashed and that the hands of Our said Lord the King be amoved from the said messuages lands tenements hereditaments and premises and that the said A. B. to the possession thereof with the issues proceeds and profits thereof and of every parcel thereof from the time of the taking of the said Inquisition and the seizure of the said messuages lands tenements hereditaments and premises into His Majesty's hands be restored saving the right of every one.

[NOTE.—With regard to the restoration of the mesne profits, see above, p. 443.]

After Confession by the Crown.

And thereupon mature deliberation being had of the premises on the same day of in the year of the reign of Our said Lord the King It is considered declared and adjudged by Our said Lord the King's right trusty and well beloved Counsellor C. D. Lord High Chancellor of Great Britain and the Judges of the Chancery Division of Our said Lord the King's High Court of Justice aforesaid that the said Inquisition be quashed and that [*continue as in the last preceding form*].

Order to enter Judgment for the Crown.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

Between The King
and
A. B.

Dated the day of 19 .

The issues herein having on the day of 19 been tried before the Honourable Mr. Justice and the said Judge having ordered that judg-

ment be entered for the Crown with costs [*on the higher scale to include the costs of shorthand notes*] It is this day adjudged that judgment be entered for the Crown with costs to be taxed [*on the higher scale to include the costs of the shorthand notes*].

The above costs have been taxed and allowed at £ as appears by a taxing officer's certificate dated the day of 19 . Entered at the Crown Office Department of the Central Office the day of 19 pursuant to the order of this Court herein dated the day of 19 .

Commencement of Roll of Proceedings.

Pleas before our Lord the King in His High Court of Justice at the Royal Courts of Justice in the County of Middlesex of Trinity Sittings in the second year of our Sovereign Lord Edward VII. by the grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith.

Mittimus to the Queen's Bench Division of a Traverse of Escheat in the Duchy of Lancaster.

Victoria by the grace of God &c. To our right trusty and well-beloved Sir Alexander James Edmund Cockburn Bart. our Chief Justice assigned to hold pleas before us and to our right trusty and well-beloved justices [*setting out the names of the judges of the Queen's Bench*] greeting. We send to you enclosed in these Presents the tenor of a certain Commission under the Seals of our

Let this Writ issue Henry W. West	Duchy and County Palatine of Lancaster bearing date the 29th day of August in the 34th year of our reign directed to [<i>names of the Commissioners</i>] commanding them [<i>stating the terms of the Commission</i>].
--	--

Attorney- General of the Duchy of Lancaster.	} Together with the tenor of the Return to the said Commission thereunto annexed returned unto us in the Chancery of our Duchy of Lancaster and there remaining of record.
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And also the record and process in the Chancery of our said Duchy in the matter of a traverse by James Moreton of our title in right of our said Duchy to an Escheat of the said messuages or dwelling-houses and premises.	}
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Commanding you that inspecting the tenor of the Commission Return record and process aforesaid you cause further to be done thereon what of right and according to the law and custom of our kingdom of England you shall see meet to be done.

Witness ourself at Westminster the day of in the 35th year of our reign.

(*Duchy Seal.*)

(*Signature of the Chancellor of the Duchy.*)

Attornment to the Crown after Escheat.

I of do hereby attorn and acknowledge myself to be tenant to His Majesty the King in right of His Crown pursuant to the demise of the late of of all that as the same are now in my tenure and occupation To hold the same at and under the same rent and obligations and conditions under which I held the same under the said demise And I have this day paid to the Earl of Desart, K.C.B., the Solicitor for the Affairs of His Majesty's Treasury the sum of £ for and on account of and in part payment the said rent.

As witness my hand this day of 19 .

(Witness)

(Signed)

Received of the sum of £ as above mentioned.

BOOK V.

Other Civil Proceedings in which the Crown
participates.

CHAPTER I.

CHANCERY.

The Crown as a Party to Actions.

By Ord. I. r. 1, all suits which were previously commenced by bill or information in the High Court of Chancery shall be instituted in the High Court of Justice by a proceeding to be called an action. Proceedings, therefore, by the Attorney-General, with or without a relator, and against the Attorney-General on behalf of the Crown in the Chancery Division, and proceedings by the Attorney-General with a relator in the King's Bench Division, are in the form of ordinary actions, and are commenced by writ and statement of claim, to which a defence is pleaded in the ordinary way. (*A.-G. v. Shrewsbury Bridge Co.*, [1880] W. N. 23; 42 L. T. 79.) How far the Attorney-General on behalf of the Crown takes part in such proceedings on the footing of an ordinary party, and how far he can avail himself of the prerogative of the Crown in matters of practice and procedure in such proceedings, is discussed in the remainder of this Chapter, in Chapter II., and in Book VI.

Such proceedings by the Attorney-General are not abated by a demise of the Crown, so far as they fall within 1 Ann. c. 2 (st. 1, c. 8, Ruff.), ss. 4, 5, which are set out above, pp. 212, 242. As to the effect of a demise of the Crown on proceedings in which the Attorney-General is a defendant, *quære*. No objection to their continuance appears to have been raised on the last occasion of a demise of the Crown. A change in the person holding the office of Attorney-General apparently would make no difference, though, if there were a vacancy in that office, the proceedings would have to be continued against the Solicitor-General. (See above, pp. 14, 212.)

It should also be observed that the Treasury Solicitor takes part as plaintiff or defendant in actions in the Chancery Division in his capacity of administrator. Recent instances will be found in *Treasury Solicitor v. Lewis*, [1900] 2 Ch. 812; 69 L. J. Ch. 833; and *Walters v. Treasury Solicitor*, [1900] 2 Ch. 107; 69 L. J. Ch. 562. As to his costs as such, see below, p. 625. As to administration suits by the Treasury Solicitor against the Attorney-General, see below, p. 497.

Actions by the Attorney-General.

Actions with and without a Relator.

Where the Crown's interests are directly concerned, the Attorney-General may sue by action in the Chancery Division. Instances in which this procedure was adopted in lieu of the procedure by English information will be found above, pp. 237, 238. Generally, it may be said that the principles applicable to equity proceedings by the Attorney-General on the Revenue side of the King's Bench Division are applicable to proceedings by the Attorney-General in Chancery where the Crown's interests are directly concerned, and the reader is referred to the discussion of those principles above, p. 234. (See *R. v. Hughes* (1866), L. R. 1 P. C. 81; 35 L. J. P. C. 23.)

Under certain circumstances, however, a Crown grantee or other person claiming under the Crown was enabled to sue in the King's name, in order to obtain the advantage of the prerogative, much in the same way as a Crown debtor was able to utilise the prerogative process of extent in order to recover against his own debtor. (See above, p. 204.) Thus, in *Miles v. Williams* (1714), 1 P. Wms. 249, 252, it was said: "In both those cases [*i.e.*, of forfeiture and of assignment to the King] the King or his grantee or assignee may sue for those debts in their own name. Though, generally, the grantee sued in the King's name; but that was only in order to take advantage of the prerogative." (See also *Earl of Stafford v. Buckley* (1750), 2 Ves. Sen. 170, 181; *Anon.* (1513), Dy. 1 a, 1 b; *Prior of Malverin's Case* (1515), Keilw. 168, 169; 5 Bac. Abr. Prerog. F. 3.) But it would appear that if such a person had sued in his own name he ought to have made the Attorney-General a party. (*Balch v. Wastall* (1718), 1 P. Wms. 445, the report of which case refers to *Hayward v. Fry* (1721), not elsewhere reported, and to *R. v. Fowler* (1718), Bunb. 38.) So in *A.-G. of the Duchy of Lancaster v. Heath* (1690), Prec. Ch. 13; 2 Eq. Ca. Abr. 1, 70, where the Attorney-General sued at the relation and on behalf of a part-owner of coal mines, since the conduct of the defendant, it was

alleged, would prejudice the Crown's right to certain dues, it was said: "Tho' Mr. Attorney-General be plaintiff, yet the relator is to have the whole benefit or loss of the suit, and is himself a party to it, for it would abate by his death, &c.; and the King's name is only made use of by the form of the Court, and he is not directly concerned at all, and very little by consequence; and the suit is not for the King's duty, but the relator's interest."

This kind of action seems to have been the earliest form of information or action by the Attorney-General with a relator, a form which has since assumed a much wider range. In the note to *A.-G. v. Oglender* (1790), 1 Ves. Jun. 246, 247, it is stated: "When information only concerns the rights of the Crown, relator is *sometimes* named; but when it concerns those whose rights the Crown takes under its particular protection, there is always a relator, who in reality sustains and directs the suit."

"Except for the purposes of costs there is no difference in substance between an *ex officio* information and an information at the relation of a private individual. In both cases the Sovereign, as *parens patriæ*, sues by the Attorney-General." (*A.-G. v. Cockermouth L. B.* (1874), L. R. 18 Eq. 172, 176; 44 L. J. Ch. 118.) These words were adopted and substantially repeated in *A.-G. v. Logan*, [1891] 2 Q. B. 100. An older version of the same statement will be found in *A.-G. v. Dublin Corporation* (1827), 1 Bli. (N. S.) 312, 337.

The relator, in the modern form of action by the Attorney-General with a relator, need have no personal interest in the subject-matter, except his interest as a member of the public. (*A.-G. v. Logan, ubi sup.*) But he is answerable to the Court and to the parties for the propriety of the suit and the conduct of it. (*A.-G. v. Vivian* (1826), 1 Russ. 226.)

The question under what circumstances an individual or a corporation may sue in respect of a public injury without joining the Attorney-General has been recently discussed in several cases. In *Boyce v. Paddington Corporation*, [1903] 1 Ch. 109; 72 L. J. Ch. 28, Buckley, J., held that the previous decisions cited by him (to which add *Cook v. Bath Corporation* (1868), L. R. 6 Eq. 177; and *A.-G. v. Earl of Lonsdale* (1868), L. R. 7 Eq. 377; 38 L. J. Ch. 335) established that a plaintiff can sue without joining the Attorney-General (1) where an interference with a public right involves interference with some private right of the plaintiff; and (2) where no private right of the plaintiff is interfered with, but he, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right. The Court of Appeal ([1903] 2 Ch. 556; 72 L. J. Ch. 695) thought that, under the circumstances

of that particular case, the plaintiff could not sue without the Attorney-General. The Attorney-General was joined as a plaintiff, and the House of Lords, in reversing the judgment of the Court of Appeal ([1906] A. C. 1; 75 L. J. Ch. 4), did not discuss the point. (See also *Watson v. Hythe Corporation* (1906), 70 J. P. 153.)

Where there is a public wrong, and where the local authority have certain special rights to sue in their own name for certain special remedies, but have not done so, and are trying to put the public wrong in suit, they must do it in the recognised way, at the suit of the Attorney-General. (*Devonport Corporation v. Tozer*, [1903] 1 Ch. 759; 72 L. J. Ch. 411; following *A.-G. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101; 72 L. J. Ch. 67.) These decisions were again followed in *A.-G. v. Wimbledon House Estate Co., Ltd.*, [1904] 2 Ch. 34; 73 L. J. Ch. 593, and in *A.-G. v. Pontypridd Waterworks Co.*, [1908] 1 Ch. 388.

A road authority may sue for damages for injury to a highway vested in them as such, without joining the Attorney-General. (*Wednesbury Corporation v. Lodge Holes Colliery Co., Ltd.*, [1907] 1 K. B. 78, 88, 90; 76 L. J. K. B. 68. Compare *Kingstown Township Commrs. v. Blackrock Township Commrs.* (1875), Ir. R. 10 Eq. 160; *Sheringham U. D. C. v. Holsey* (1904), 91 L. T. 225; and *A.-G. v. Garner*, [1907] 2 K. B. 480; 76 L. J. K. B. 965.)

Similarly, an authority, which has statutory control over the matter in respect of which a breach is alleged to have occurred, may sue alone to restrain such alleged breach. (*London C. C. v. South Metropolitan Gas Co.*, [1904] 1 Ch. 76; 73 L. J. Ch. 136.)

But where there has been an exceeding of the powers given by an Act of Parliament, but no injury has been occasioned to any individual, and there is none which is imminent or of irreparable consequences, no one but the Attorney-General, on behalf of the public, can apply to restrain such excess. (*Ware v. Regent's Canal Co.* (1858), 3 De G. & J. 212; 28 L. J. Ch. 153.)

So where a local authority sanctioned the obstruction of a highway. (*A.-G. v. Mayo C. C.*, [1902] 1 I. R. 13. See also *Bermondsey Vestry v. Brown* (1865), L. R. 1 Eq. 204; 35 Beav. 226.)

Where, however, the matter at issue is a private one between individuals and a statutory company, though public interests may be ultimately affected by the performance or non-performance of their alleged duties by the company, the Attorney-General need not be a party. (*Wilson v. Furness Rail. Co.* (1869), L. R. 9 Eq. 28; 39 L. J. Ch. 19.)

A few of a large number of persons may institute an action, on behalf of themselves and the rest, for relief against acts injurious to

their common right, although the majority approve of those acts and disapprove of the institution of the action; and the Attorney-General need not be a party. But where the whole body concur in an abuse, any action to restrain it must be instituted by the Attorney-General. (*Bromley v. Smith* (1826), 1 Sim. 8; 5 L. J. Ch. (O. S.) 53. See also *Ellis v. Duke of Bedford*, below, p. 481.)

The Court will not inquire into the motives of the relators, or the *quantum* of public benefit which will result from the action, if the Attorney-General, in his discretion, has deemed the action proper to be brought. (*A.-G. v. London C. C.*, [1901] 1 Ch. 781; [1902] A. C. 165; 70 L. J. Ch. 367; 71 L. J. Ch. 268. See also *A.-G. v. Dorchester Corporation* (1906), 94 L. T. 682.)

Actions concerning Property affected by a Trust for Charitable or Public Purposes.

Apart from Statute.

“Where property affected by a trust for public purposes is in the hands of those who hold it devoted to that trust, it is the privilege of the public that the Crown shall be entitled to intervene by its officer for the purpose of asserting, on behalf of the public generally, that public interest and that public right which probably no individual could be found willing effectually to assert, even if the interest were such as to allow it.” (*A.-G. v. Compton* (1842), 1 Y. & C. C. C. 417, 427, per Knight Bruce, V.-C.)

See also *A.-G. v. Brown* (1818), 1 Swanst. 265 (local rate levied by commissioners); *A.-G. v. Shrewsbury Corporation* (1843), 6 Beav. 220; 12 L. J. Ch. 465 (bridge tolls); *A.-G. v. Lichfield Corporation* (1848), 11 Beav. 120; 17 L. J. Ch. 472 (borough fund); *A.-G. v. Norwich Corporation* (1848), 16 Sim. 225; 21 L. J. Ch. 139 (borough fund); *A.-G. v. Southampton Guardians* (1849), 17 Sim. 6; 18 L. J. Ch. 393 (poor rate); *A.-G. v. Merthyr Tydfil Union*, [1900] 1 Ch. 516; 69 L. J. Ch. 299 (poor rate); *A.-G. v. Eastlake* (1853), 11 Hare, 205 (local rate levied by commissioners); *A.-G. v. Avon Corporation* (1863), 33 Beav. 67; reversed in part, 3 D. J. & S. 637; 33 L. J. Ch. 172 (corporate property); *A.-G. v. Wigan Corporation* (1854), 5 D. M. & G. 52; 23 L. J. Ch. 429; *A.-G. v. Brecon Corporation* (1878), 10 Ch. D. 204; 48 L. J. Ch. 153; *A.-G. v. Swansea Corporation*, [1898] 1 Ch. 602; 67 L. J. Ch. 356; and *A.-G. v. De Winton*, [1906] 2 Ch. 106; 75 L. J. Ch. 612 (borough fund); and *A.-G. v. West Hartlepool Improvement Commrs.* (1870), L. R. 10 Eq. 152; 39 L. J. Ch. 624 (local rate levied by commissioners).

In *Evan v. Avon Corporation* (1860), 29 Beav. 144; 30 L. J. Ch. 165, it was held that a bill by a member of a municipal corporation

to restrain them from dealing with their corporate property would not lie, his interest being in his corporate and not in his individual capacity, and that the action must be by the Attorney-General; hence the action *A.-G. v. Avon Corporation*, *ubi sup.* Compare *Watson v. Hythe Corporation* (1906), 70 J. P. 153. *Secus*, where, as in *Prestney v. Colchester Corporation* (1882), 21 Ch. D. 111; 51 L. J. Ch. 805, some (on behalf of all) freemen of a borough claimed to share, for their private benefit, the net proceeds of certain properties vested in the corporation. In this action, however, the Attorney-General was made defendant.

In *A.-G. v. Limerick Corporation* (1816), Beat. 563, it was held that an information in respect of corporate property was rightly filed against a member of the corporation as well as against the corporation, where a special personal liability was charged against the individual.

The cases where the Attorney-General has brought actions with respect to charitable property in the narrower sense, as opposed to property devoted to public purposes, are very numerous. He has also a right to see that funds bequeathed by a British subject to foreign charities are secured, but not to see to the administration of such foreign charities. (*A.-G. v. Sturge* (1854), 19 Beav. 597; 23 L. J. Ch. 495; compare *In re Fraser* (1883), 22 Ch. D. 827; 52 L. J. Ch. 469.)

In special circumstances, however, particularly where the charity is regulated by a charter, an information has been held to be a wrong form of procedure. (See *A.-G. v. Smart* (1748), 1 Ves. Sen. 72, and the cases cited in the editor's note thereto.)

As to the position of the relator, see the general observations above, p. 465. In charity informations, as in others, "though a relator is commonly required for the purpose of securing costs, the Attorney-General may, if he pleases, proceed without a relator." (*In re Bedford Charity* (1819), 2 Swanst. 470, 520, per Lord Eldon, L.C.) But in *A.-G. v. Boucherett* (1855), 25 Beav. 116, 120, Sir J. Romilly, M.R., said: "It is of the greatest importance, whenever there is a serious question relating to charities in a contested case, that the Attorney-General should require a relator to be named who may be answerable for costs. In a recent case of *A.-G. v. Earl of Waldegrave* I was obliged to dismiss the information; the costs fell on the charity, because there was no relator. It becomes, therefore, of great importance that the jurisdiction of the Court should be exercised, in the absence of a relator, only in those cases in which it is called on to carry into effect something which is manifest and plain; if the case depends on a contest of evidence, a relator should be

appointed, in order that the Court may be able to make the costs follow the result."

As to the necessity of the relator's having an interest, in *A.-G. v. Oglender* (1790), 1 Ves. Jun. 246, an information was dismissed because the relator had no title; and in *A.-G. v. Bucknall* (1741), 2 Atk. 328, it was said that an interest, however remote, would be sufficient. But in *A.-G. v. Vivian* (1826), 1 Russ. 226, 236, Lord Gifford, M.R., said: "Whatever opinions may have been formerly entertained on this point, I conceive it to be now settled that it is not necessary for relators to have any interest in the subject of the suit. . . . The character of a relator, therefore, does not seem to require the least particle of private interest in the due administration of the charity. The main object of having a relator is to secure to the defendants the costs of the information, in case it should turn out that the information was improperly filed. Whatever be the relief prayed, it is still the information of the Attorney-General, and the Court must act upon it, if the due administration of the charity call for the Court's interference." He dismissed the suit as a bill, but allowed it to continue as an information.

By Statute.

The Charities Procedure Act, 1812 (52 Geo. III. c. 101).—Every petition under this Act is to be submitted to and allowed by the Attorney- or Solicitor-General. If a petition has not been so allowed, an order made upon it is a nullity. (*A.-G. v. Green* (1820), 1 Jac. & W. 303.) The allowance ought only to be given upon the same deliberation as would be afforded to the case, if it were presented in the shape of an information. (*E. p. Skinner* (1817), 2 Mer. 453.) It can only be allowed by the Solicitor-General when there is a vacancy in the office of Attorney-General. (*Id. Ib.*) The general duty of the Attorney-General as to the allowance of petitions under this Act is dealt with in *Ludlow Corporation v. Greenhouse* (1827), 1 Bli. (N. S.) 17. The Attorney-General may petition under this Act, by the Charitable Trusts Act, 1853, s. 43 (see below).

The Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137).—Sect. 18 of the Act saves the power of the Attorney-General, acting *ex officio*, to make such applications and take and prosecute such proceedings with respect to any charity, in Chancery or otherwise, as if the Act had not been passed.

Sect. 43 empowers him to make any application under the Act or, acting *ex officio*, to apply by petition with respect to any charity under the Charities Procedure Act, 1812 (52 Geo. III. c. 101), or any other Act authorising a petition.

The Charity Commissioners may certify to the Attorney-General any case in which they think proceedings should be taken, and he may take such proceedings, if so advised (sect. 20). He usually, at the present day, only takes proceedings in cases where the matter has been so certified to him. (See *In re Manser*, [1905] 1 Ch. 68; 74 L. J. Ch. 95.)

Applications to the County Court by the Attorney-General are provided for by sect. 32. He may appeal against an order of a County Court within three months, without any notice to the Court or the Commissioners, and without giving security for costs (sect. 39).

The Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136).—The Attorney-General, or a person authorised by him or the Charity Commissioners, may present a petition by way of appeal against any order of the Commissioners appointing or removing a trustee or trustees or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate, or establishing a scheme for the administration of a charity, within three months after the definitive publication of the order by the Commissioners (sect. 8). (See *E. p. Nicholls* (1865), 4 D. J. & S. 588; 34 L. J. Ch. 169.)

The Roman Catholic Charities Act, 1860 (23 & 24 Vict. c. 134).—The Court, on the application of the Attorney-General, may apportion estates, so that a portion may be applied to lawful charitable trusts for the benefit of Roman Catholics and the residue may be subject to such lawful trusts as the Court may deem just, in lieu of superstitious or prohibited trusts to which it was previously subjected (sect. 1). (See *In re Blundell's Trusts* (1861), 30 Beav. 360.)

The Charitable Trusts (Recovery) Act, 1891 (54 & 55 Vict. c. 17).—The Charity Commissioners may, with the sanction of the Attorney-General, institute proceedings on behalf of a charity to recover property, of which the gross annual income does not exceed 20*l.* per annum, and which appears to belong to the charity; and their expenses shall be paid as if they were costs of the Attorney-General in a charity matter (sect. 3).

Actions on behalf of the King as Head of the Church.

Actions by the Attorney-General on behalf of the King in this capacity are to be distinguished from those which were dealt with under the last preceding head. They have usually occurred in the matter of restraining waste by ecclesiastical persons whose patron was the Crown. Thus, in *Jefferson v. Bishop of Durham* (1797), 1 B. & P. 105, it was said that as only the patron can prevent a rector or vicar, so a bishop cannot be prevented otherwise than by prohibition or by injunction at the suit of the Crown by its Attorney-General, from

exercising the right of cutting timber. So Lord Eldon, L.C., in *Wither v. Dean and Chapter of Winchester* (1817), 3 Mer. 421. In a note to *Knight v. Mosely* (1753), Amb. 176, it is stated that "in Rol. Abr. there is a prohibition of waste to restrain bishops, in the case of the Crown, and the Attorney-General may by information restrain devastation." In *A.-G. v. Moses* (1817), 2 Madd. 294, an information and bill to set aside leases granted by a vicar and vestrymen under an Act of Parliament, the Court said that such a proceeding was the assertion of a mere private right of a vicar who was calling for the restoration of the part of his glebe, and that the Attorney-General had nothing to do with such a claim; that the King or the Attorney-General had no other interest in such a suit than that of vindicating the rights of the Church, but that interest was the same in respect to suits for the recovery of tithes, in which the Attorney-General never joined; and that the King had no interest as patron.

In *City and South London Rail. Co. and St. Mary Woolnoth and St. Mary Woolchurch Haw, In re*, [1903] 2 K. B. 728; 72 L. J. K. B. 936, affirmed [1905] A. C. 1; 74 L. J. K. B. 147, which arose out of an arbitration to fix the compensation for the compulsory purchase of the subsoil of a church, the Attorney-General was represented on behalf of the Crown as alternate patron of the benefice, in addition to the Ecclesiastical Commissioners.

Actions for the Recovery of Treasure Trove.

The ordinary proceeding for this purpose would be by information of *devenerunt* on the Revenue side of the King's Bench Division, but, as has already been observed (p. 177), it has been the recent practice of the Crown, for no very obvious reason, to proceed in such cases by action by the Attorney-General in the Chancery Division, as in *A.-G. v. Moore*, [1893] 1 Ch. 676; 62 L. J. Ch. 607, and *A.-G. v. Trustees of the British Museum*, [1903] 2 Ch. 598; 72 L. J. Ch. 743. A precedent of the pleadings is printed below, p. 544.

Actions to Set aside Letters Patent.

In *A.-G. v. Vernon* (1685), 1 Vern. 277, 370, the Court held, after much discussion, that the Attorney-General might bring an information or English bill in Chancery to set aside letters patent obtained by fraud. See also Mitford, Pl. (ed. 5), 23, and below, p. 537.

Actions for the Protection of Public Rights and the Prevention of Public Injury.

Actions for this purpose are brought by the Attorney-General, with or without a relator, in either the Chancery or the King's

Bench Division, and the general observations which have been made above, p. 464, apply most particularly to them. The nature of the injury to the public or the manner in which public rights have been infringed does not affect the form of the action, but it will be convenient to group together the two main classes into which such actions divide themselves.

Public Nuisances and Purprestures.

The distinction which has been drawn between nuisances and purprestures, namely, that the latter term refers to encroachments on the possessions of the Crown where the *jus privatum* of the Crown is invaded, while the former refers only to trespasses by which the *jus publicum* of the Crown is affected, does not appear to be entirely valid. Where, however, the *jus privatum* of the Crown, that is to say, the prerogative rights or possessions of the king, which he has or holds in right of his Crown or as an individual, are invaded by a trespass, by whatever name such trespass is called, the Crown's remedy is by English information, or by information of intrusion, or by action by the Attorney-General in the Chancery Division. This matter has been dealt with above, pp. 237, 238.

Where there is a public nuisance, the Attorney-General may sue either *ex officio* or with a relator. Individuals may sue without the Attorney-General under the circumstances referred to in *Boyce v. Paddington Corporation* (see above, p. 465). See also *Soltan v. De Held* (1851), 2 Sim. (N. S.) 133; 21 L. J. Ch. 153, and *A.-G. v. Barker* (1900), 83 L. T. 245. An individual, who so sues, must allege the special damage which he has suffered. (*Stockport District Waterworks Co. v. Manchester Corporation* (1863), 7 L. T. 545.) Even a local authority cannot sue without the Attorney-General, except where its property has been damaged by the nuisance. (*A.-G. v. Logan*, [1891] 1 Q. B. 100; *Bermondsey Vestry v. Brown* (1865), L. R. 1 Eq. 204; 35 Beav. 226; *Nuneaton L. B. v. General Sewage Co.* (1875), L. R. 20 Eq. 127; 44 L. J. Ch. 561; *Wallasey L. B. v. Gracey* (1887), 36 Ch. D. 593; 56 L. J. Ch. 739; *Tottenham U. D. C. v. Williamson & Sons*, [1896] 2 Q. B. 353; 65 L. J. Q. B. 591; *Stoke P. C. v. Price*, [1899] 2 Ch. 277; 68 L. J. Ch. 447; *Wednesbury Corporation v. Lodge Holes Colliery Co.*, [1907] 1 K. B. 78, 88, 90; 76 L. J. K. B. 68.) The relator need not be interested in the subject-matter or affected by the nuisance (*A.-G. v. Basingstoke Corporation* (1876), 45 L. J. Ch. 726), nor need the person who is proceeded against have been personally responsible for the nuisance, if it is committed on his land. (*A.-G. v. Tod Heatley*, [1897] 1 Ch. 560; 66 L. J. Ch. 275.)

Contravening or exceeding Statutory Powers.

The Attorney-General, with or without a relator, is entitled, and it is his duty, on behalf of the public, to bring an action to restrain an individual or a corporation from contravening or exceeding the powers conferred upon them by statute or charter. Such proceedings are entirely at his discretion. (*A.-G. v. London C. C.*, [1902] A. C. 165; 71 L. J. Ch. 268, see above, p. 467.) There is no need that he should allege or prove any actual injury to the public. (*A.-G. v. London & North Western Rail. Co.*, [1900] 1 Q. B. 78; 69 L. J. Q. B. 26, where many of the earlier cases are discussed.) It is otherwise where an individual is suing without the Attorney-General. (*Ware v. Regent's Canal Co.* (1858), 3 De G. & J. 212; 28 L. J. Ch. 153; *Stockport District Waterworks Co. v. Manchester Corporation* (1863), 7 L. T. 545; *Pudsey Coal Gas Co. v. Bradford Corporation* (1873), L. R. 15 Eq. 167; 42 L. J. Ch. 293; *A.-G. v. Hanwell U. D. C.*, [1900] 1 Ch. 51; 69 L. J. Ch. 39; *Thorne v. Taw Vale Rail. and Dock Co.* (1850), 13 Beav. 10; *London Association of Shipowners and Brokers v. London and India Docks Joint Committee*, [1893] 2 Ch. 242; 62 L. J. Ch. 294.) Unusual examples were *A.-G. v. Appleton* [1907], 1 I. R. 252, and *A.-G. v. Myddletons, Ltd.*, [1907] 1 I. R. 471, where the Attorney-General sued with a relator to restrain the defendants from a fraudulent attempt to evade statutory provisions by their manner of practising as dentists.

The special provisions of the Railway Regulation Act, 1844, s. 17, in this behalf, do not preclude the Attorney-General from taking such proceedings against a railway company apart from the machinery of that section (see below, p. 474).

Actions on Certificate of the Board of Trade.

There are certain statutory provisions dealing with such proceedings which require separate mention, but they do not in any way limit the Attorney-General's general right and duty to take similar proceedings without any such certificate. (*A.-G. v. Great Northern Rail. Co.*, cited below, p. 474.)

The Railway Regulation Act, 1844 (7 & 8 Vict. c. 85), s. 17, provides that if it appears to the Board of Trade that a railway company has contravened or exceeded its statutory powers, and that it would be for the public advantage that it should be restrained from so acting, the Board shall certify the same to the Attorney-General in England or Ireland or the Lord Advocate in Scotland, and the Attorney-General or Lord Advocate shall proceed to recover

penalties, or to obtain an injunction or order to restrain the company from so acting, as the case may be.

The Attorney-General is bound to take proceedings when the Board certifies to him under this provision, but the section does not limit the general right of the Attorney-General to take proceedings against a company for contravening or exceeding its statutory powers (see above, p. 473), quite apart from the provisions of the section and without such a certificate. (*A.-G. v. Great Northern Rail. Co.* (1860), 1 Dr. & Sm. 154; 29 L. J. Ch. 794.)

The Court will not inquire into the reasons for which the certificate was given. (*A.-G. v. Oxford, Worcester & Wolverhampton Rail. Co.* (1854), 2 W. R. 330.)

Reference may here be made to a cognate case, where the Board of Trade, on the report of their inspector, had ordered certain companies to postpone the opening of a railway by virtue of the Railway Regulation Act, 1842 (5 & 6 Vict. c. 55), s. 6, and the companies disputed the validity of the Board's order. The Attorney-General then commenced an action to restrain them from opening the railway, and the Court held that the Board had exclusive jurisdiction, and would not enter into the question whether the reasons given by the inspector in his report did not show on the face of it that he had come to a wrong conclusion. (*A.-G. v. Great Western Rail. Co.* (1877), 4 Ch. D. 735; 46 L. J. Ch. 192.)

The Metropolis Gas Act, 1860 (23 & 24 Vict. c. 125), s. 45, as amended by several private Acts of the companies subject to its provisions, provides that if it appears to the Board of Trade that the Act has not been complied with by any of the companies, or that a company is acting in a manner unauthorised by law, and that it would be to the public advantage that it should be restrained from so acting or compelled to do any act for remedying its wrongful act, the Board may certify the same in writing to the Attorney-General, and he may, if so advised, take proceedings so to restrain or compel the company, but such certificate may not be given more than a year after the commission of the offence specified in the certificate.

The Telegraph Act, 1853 (26 & 27 Vict. c. 112), s. 53, provides that where it appears to the Board of Trade that any provision of the Act has not been complied with on the part of the company, and that it would be for the public advantage that compliance therewith should be enforced, the Board may so certify to the Attorney-General or Lord Advocate, who may enforce compliance by the recovery of penalties or otherwise; but no such certificate is to be given until twenty-one days after the Board have given notice to the company of their intention.

This provision can have little or no application to the Postmaster-General, who has taken the place of the telegraph companies (see above, p. 54), but it would be fully applicable to his licensees.

Proceedings under the Marriage Acts.

By the Marriage Act, 1823 (4 Geo. IV. c. 76), s. 23, where a valid marriage is solemnised between parties under age, not being widower or widow, by false oath or by fraud, the Attorney-General by information in the nature of an English bill in Chancery, or in the Exchequer (see above, p. 240), at the relation of a parent or guardian of the minor, whose consent has not been given to such marriage, and who shall be responsible for any costs incurred, may sue for a forfeiture of all estate, right, title and interest in any property which has accrued or shall accrue to the party so offending by force of such marriage, and the Court may make such other arrangements as are mentioned in the section. No such information is to be filed unless it is made out to the satisfaction of the Attorney-General by oath that the marriage was so solemnised as to justify, in the Attorney-General's opinion, the filing of the information, and that it was solemnised without the relator's consent, or without that of any parent or guardian to the relator's knowledge; and that the relator discovered the fact of the marriage not more than three months before his application to the Attorney-General.

By sect. 25, the information is to be filed within one year of the marriage, and is to be prosecuted with due diligence. Provision is made for service, by advertisement or otherwise, on parties absconding or resident abroad, and for judgment in default of their appearance. In case of the death of the relator, the Court of Chancery may appoint a proper person at whose relation the suit may be continued.

These provisions are extended to valid marriages had by means of any wilfully false declaration, notice, or certificate, made or obtained by either party to the marriage, as to any matter for which a solemn declaration, notice, or certificate is required, by the Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), s. 19; and to marriages solemnised abroad by means of any wilfully false notice signed or oath made by either party, as to any matter for which a notice or oath is required by the Act, by the Foreign Marriages Act, 1892 (55 & 56 Vict. c. 23), s. 14.

The Attorney-General need not appear separately from the relator, except upon application by the relator for a compromise of the information on terms of the execution by the husband of a proposed

settlement. (*A.-G. v. Teather* (1881), 43 L. T. 749. See *A.-G. v. Read* (1871), L. R. 12 Eq. 38.)

As to the sufficiency of the authority given by a relator (father) resident abroad, under special circumstances, see *A.-G. v. Willshire*, [1875] W. N. 182; 45 L. J. Ch. 53.

Where the husband incurs a forfeiture under these provisions, the Court has no discretion to mitigate the penalty, but is bound to settle and secure all property, present and future, of the wife for the benefit of herself or the issue of the marriage. (*A.-G. v. Mullay* (1828), 4 Russ. 329.) But in order to sustain such an information, it is not necessary to show that the person, with whom the marriage was procured, was entitled at the time of the marriage to any property, either in possession, reversion, remainder, or expectancy. (*A.-G. v. Severne* (1844), 1 Coll. 313; 13 L. J. Ch. 399.)

The husband cannot be interrogated as to the facts relating to the charge. (*A.-G. v. Lucas* (1843), 2 Hare, 566; 12 L. J. Ch. 506.)

As to the terms of the order settling the property, which ought to be made in proceedings of this kind, see *A.-G. v. Lucas* (1848), 2 Ph. 753; *A.-G. v. Clements* (1871), L. R. 12 Eq. 32; 40 L. J. Ch. 678; *A.-G. v. Read* (1871), L. R. 12 Eq. 38.

It was held in *A.-G. v. Wareing* (1880), 28 W. R. 623, that no attachment for non-execution of a settlement by order of the Court would issue against the husband, until the settlement had been tendered to him personally for execution after service of the decree, and he had refused to execute it.

Proceedings under the Offences against the Person Act, 1861.

By this Act (24 & 25 Vict. c. 100), s. 53, where any woman of any age has any interest in any real or personal estate, or is heiress or next of kin, actual or presumptive, to anyone having such interest, whosoever from motives of lucre takes her away, or detains her against her will with intent to marry or carnally know her, or to cause her to be married or carnally known, and whosoever fraudulently takes away or detains such woman, being under the age of 21 years, out of the possession and against the will of her parents or guardians with such intent, is liable to the penalties thereby provided, and is incapable of taking any estate or interest in her property. If any such marriage has taken place, such property shall upon the conviction of such person be settled in such manner as the Chancery Division in England or Ireland shall, upon any information at the suit of the Attorney-General, appoint.

Actions where the Attorney-General is a Defendant.

General Observations.

Where the rights of the Crown are immediately in question, and proceedings against the Crown are possible, they must be taken by petition of right (see above, p. 330), but where the interests of the Crown are only incidentally concerned in proceedings, the Attorney-General on behalf of the Crown may and must be made a defendant. See *Reeve v. A.-G.* (1741), 2 Atk. 223, and what is said of this case in the argument in *Penn v. Lord Baltimore* (1750), 1 Ves. Sen. 444, 446. In *Pen v. Lord Baltimore* (1745), Ridg. t. H. 332, 336, the Court, in holding that to a suit to settle boundaries between proprietors of provinces granted by the Crown the Attorney-General should be a party, said: "It is true you cannot always have a decree against the Attorney-General, yet he must always be a party." See also *Casberd v. Ward* (1819), 6 Price, 411; *Ryves v. Duke of Wellington* (1846), 9 Beav. 579; 15 L. J. Ch. 461; *Delany v. Firman* (1849), 12 Ir. Eq. R. 304. If he is not made a party, the Court will refuse to proceed, unless it is clear that the result of the proceedings must benefit, or at least cannot be prejudicial to, the interests of the Crown. See *Dolder v. Bank of England* (1805), 10 Ves. 352; *Dolder v. Lord Huntingfield* (1805), 11 Ves. 283; *Stafford v. Earl of Anglesey* (1661), Hard. 181; *Hovenden v. Lord Annesley* (1805), 2 Sch. & L. 607; *Green v. Weston* (1837), 3 My. & Cr. 385; 7 L. J. Ch. 67. In such a case, where the Crown's title appears upon the record, although the Attorney-General makes no claim, the Court cannot decree against such title. (*Barelay v. Russell* (1797), 3 Ves. 424.)

Whether the Attorney-General puts in a defence or not, in cases where he is made a defendant, will depend upon his view as to what is demanded by the interests of the Crown or of public justice; but usually, where he does not wish to raise any substantial defence, he will file a formal plea praying the Court to take care of the interests of the Crown in a form similar to that printed below, p. 555. See also the form in *Perkins v. Bradley* (1842), 1 Hare, 219, 223. Reference may be made to *Davison v. A.-G.* (1813), 5 Price, 398, n.; and *Errington v. A.-G.* (1731), Bunb. 303.

Where the Attorney-General represents the Interests of Charities.

Apart from Statute.

A general rule was thus stated in *Ware v. Cumberlege* (1855), 20 Beav. 503; 24 L. J. Ch. 630: "The Attorney-General represents all

absent charities, and it is sufficient to have him here to represent all absent charities. But absent charities may obviously be of two different characters: they may either be under gifts to specified individual charities, or to charity generally. In case the gift is to charity generally, no one can represent it but the Attorney-General, and he must be here to represent such general charities. When there are specified individual charities, then the Attorney-General's presence is not universally necessary; but it is required by the Court upon various occasions, as, for instance, where any rules are required for the regulation of the internal conduct of the charity itself, such as the establishment of a scheme and the like; there the Attorney-General is necessary for the purpose of aiding and assisting the Court in directing and sanctioning the general system and principle that ought to govern charities of these descriptions. But there are other cases where there is no question as to the conduct or management of the charities, but only whether the charity is entitled to a particular legacy or not. In these cases, the Attorney-General is rather in the nature of a trustee for those charities, and the Court prefers having before it the charities beneficially interested, for the purpose of putting their interests before the Court in the light which they consider most favourable to them. In those cases I think it preferable that the charity itself should appear, rather than that the Attorney-General should represent it." See also *Potts v. Turnley* (1849), 1 Ir. Jur. (O. S.) 57; *Fagan v. Howley* (1887), 22 I. L. T. R. 7; *In the Goods of Young* (1873), Ir. R. 7 Eq. 218.

As to the presence of the Attorney-General where a scheme is to be settled, see *Re Skefford's Charity* (1861), 5 L. T. 488; *A.-G. v. Goldsmiths' Co.* (1833), C. P. Coop. 292; *A.-G. v. Haberdashers' Co.* (1835), 2 My. & K. 817; *In re Wyersdale School* (1853), 10 Hare, App. II. lxxiv. He need not be a party where the questions to be settled concern a merely voluntary and private charitable institution, as in *Anon.* (1745), 3 Atk. 277.

In *Warden and Brethren of Clum Hospital v. Lord Powys* (1842), 6 Jur. 252, and *Governors of Christ's Hospital v. A.-G.* (1846), 5 Hare, 257, trustees were permitted to file a bill, making the Attorney-General a defendant, for the purpose of having the accounts of a charity taken, and in order to obtain their own discharge and the settlement of a scheme, although the usual proceedings for such a purpose would be an information by the Attorney-General. Compare *Monill v. Lawson* (1719), 2 Eq. Ca. Abr. 167, pl. 13.

The presence of the Attorney-General, where a fund may have been bequeathed to a superstitious use, or is otherwise in such a position as to be applicable to a charitable purpose, not superstitious, according

to the pleasure of the Crown expressed under the Sign Manual, is dealt with in *De Themmines v. De Bonneval* (1828), 5 Russ. 288; 7 L. J. Ch. 35; and *Felan v. Russell* (1842), 4 Ir. Eq. R. 701.

Where a legacy is given to an established charity to become part of its general funds, the Attorney-General need not be made a party, but he must be a party where a charitable legacy is given to persons having no corporate character (*Wellbeloved v. Jones* (1822), 1 Sim. & S. 40; 1 L. J. (O. S.) Ch. 11); or where the legacy is given to an established charity, but upon trusts not corresponding to those upon which its general funds are held. (*Corporation of the Sons of the Clergy v. Mose* (1839), 9 Sim. 610.) See also *Chitty v. Parker* (1792), 4 Bro. C. C. 38; *In the Goods of McAuliffe*, [1895] P. 290; 64 L. J. P. 126; and *Magill v. Murphy* (1870), 4 I. L. T. News. 472.

Where the management of no charity revenue is concerned, as, for instance, where those who are objects of the charity call upon the trustees to perform some duty or other, the Attorney-General need not be a party. See the cases cited in Lewin on Trusts (ed. 11), 1174, n., and compare *A.-G. v. Warren* (1818), 2 Swanst. 291.

Service on the Attorney-General, who had not been made a party to the suit, of a decree directing inquiries was held not so far to bind the Crown as to preclude the institution on behalf of the Crown of further inquiries. (*Johnstone v. Hamilton* (1865), 11 Jur. (N. S.) 777.)

By Statute.

The Charities Procedure Act, 1812 (52 Geo. III. c. 101).—The Attorney-General merely certifies his allowance of petitions under this Act, and is not made a party to them (*In re Chertsey Market* (1819), 6 Price, 261), but, in the days when he was entitled to take private business, he might appear for the respondents on such a petition. (*Ludlow Corporation v. Greenhouse* (1827), 1 Bli. (N. S.) 17.) But it is said that he ought to be a party to all inquiries before the Master under the Act. (*A.-G. v. Earl of Stamford* (1840), 1 Ph. 737; 10 L. J. Ch. 58; *In re Hanson's Trust* (1852), 9 Hare, App. I. liv.)

The Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137).—Applications under the Act (by persons other than the Attorney-General), unless confined to the appointment of trustees and the obtaining of any vesting order or orders for the transfer of stock consequent thereon, should be served on the Attorney-General, by means of service on the Treasury Solicitor of a copy of the summons sealed for service. (Daniell, C. P. (ed. 7), 1754.)

The Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136).—A petition of appeal under sect. 8 of this Act shall not be presented by any person before the expiration of 21 days after written notice, under the

hand of the appellant, of his intention to present the petition, has been served on the Attorney-General by delivery of the same to the Treasury Solicitor. (Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), s. 11.) By sect. 9 of the Act of 1860, the Attorney-General, if he thinks fit, or any person authorised by him or by the Charity Commissioners, may appear as respondent. Upon any such appeal the Court may make any order respecting the costs, charges, and expenses of the Attorney-General or other respondent.

Where the Attorney-General represents the Heir-at-Law.

Where the heir-at-law is a necessary party and cannot be found or does not exist, the Attorney-General must be made a defendant in his stead, as in *Thrupton v. A.-G.* (1685), 1 Vern. 340; *Humberston v. Humberston* (1716), 1 P. Wms. 332; *Burgess v. Wheate* (1759), 1 Eden, 177 (see at p. 181); *Smith v. Bicknell* (1805), 3 V. & B. 51, n.; *Miller v. Warmington* (1820), 1 Jac. & W. 484.

Where the Attorney-General represents the Next of Kin.

As in the case of an heir-at-law, the Attorney-General must be made a defendant in lieu of the next of kin, where the action affects their interest and they cannot be found, or where there are no next of kin, as in *Middleton v. Spicer* (1783), 1 Bro. C. C. 201; *In re Wilcocks' Settlement* (1875), 1 Ch. D. 229; 45 L. J. Ch. 163; *Murphy v. Osborne* (1846), 9 Ir. Eq. R. 254, and many other cases. So in *Long v. Wakeling* (1839), 1 Beav. 400, where administration had been granted to a sister of the deceased, and it turned out that the deceased was illegitimate, the Court refused to pay his share of a fund in Court to the administratrix, but ordered it to be carried to a separate account, and not to be paid out without notice to the Crown. In *Jones v. Goodchild* (1729), 3 P. Wms. 33, a suit by the executor of a bastard's mother to recover property bequeathed to the bastard, now deceased, the Court held that, as the executor had the legal title to the property, the Attorney-General was not a necessary party.

So where the next of kin of a lunatic are unknown, a petition in lunacy should be served on the Attorney-General, and not on the Treasury Solicitor. (*In re Bourke* (1864), 2 D. J. & S. 426.) See further below, p. 530.

In *Bell v. Alexander* (1847), 6 Hare, 543, the Court held that the Attorney-General, as a party, did not sufficiently represent the estate of an intestate bastard to enable the Court to dispense with the presence of a properly constituted legal personal representative of the bastard. So also *Lewis v. Lewis* (1852), 16 Jur. 324; *contra*, *M'Kiernan v. Kernan* (1841), Flan. & K. 352; 4 Ir. Eq. R. 269.

It was said in *Robson v. A.-G.* (1843), 10 Cl. & F. 471, that the Court will lean strongly towards applications for further investigation in cases in which property falls to the Crown, as that generally happens not from want of next of kin, but from failure of legal evidence of their title. This observation, of course, does not apply to cases in which the Crown has taken property owing to illegitimacy.

Proceedings affecting the Crown's title to Property of Aliens and Outlaws.

The title, if any, of the Crown to the realty of aliens since the Naturalization Act, 1870, is dealt with above, pp. 421, 431.

Forfeiture for treason or felony was abolished by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 1, but forfeiture consequent upon outlawry was preserved. It would be necessary to make the Attorney-General a party to proceedings which affected the Crown's title to the property of aliens and outlaws, so far as it still exists. For cases where the Attorney-General was made a party in respect of outlawry the reader is referred to *Balch v. Wastall* (1718), 1 P. Wms. 445, and *Anon. v. Bromley* (1725), 2 P. Wms. 269. In *Bromley v. Smith* (1859), 26 Beav. 644; 29 L. J. Ch. 18, where a plaintiff was outlawed pending the suit, it was held that the Attorney-General should not be made a party in respect of the outlawry, unless a question was raised with regard to its validity or enforcement.

Cases with regard to aliens, which may be referred to, are *Burk v. Brown* (1742), 2 Atk. 397, and *In re Martinez' Trust*, [1870] W. N. 70; 22 L. T. 403; see also *Tomkins v. Lane* (1854), 2 W. R. 340, where it was said that the proper form of order for payment out of Court of money standing to the account of a felon was that the money might be paid to such persons as Her Majesty might by sign manual appoint; and *In re Bateman's Trust* (1873), L. R. 15 Eq. 355; 42 L. J. Ch. 553.

Where the Attorney-General represents the Public.

In *Ellis v. Duke of Bedford*, [1899] 1 Ch. 494; 68 L. J. Ch. 289, which was an action by certain growers on behalf of themselves and all other growers within the meaning of a private Act against a lord of a market to enforce certain alleged preferential rights, it was held by the Court of Appeal that the plaintiffs as representing the class of growers could maintain the action, but that the Attorney-General must be added as a defendant to represent the rest of the public who were interested in disputing the alleged preference. But in the House of Lords (*s. n. Duke of Bedford v. Ellis*, [1901] A. C. 1; 70

L. J. Ch. 102), Lord Macnaghten said that he could not see what the Attorney-General had to do with the matter, and Lord Brampton agreed with him.

Appeals by Public Accountants.

The question whether such appeals should be brought in the Chancery Division is discussed above, p. 160.

Actions to Perpetuate Testimony where the Crown is Interested.

"In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken." (Ord. XXXVII. r. 36, which substantially reproduces the Perpetuation of Testimony Act, 1842 (5 & 6 Vict. c. 69), s. 2.) A reported instance of such proceedings will be found in *Campbell v. A.-G.* (1867), L. R. 2 Ch. 571; 36 L. J. Ch. 600. See also *Smith v. A.-G.* (1777), Rom. N. of C. 54; cited 6 Ves. 256.

Petitions under the National Debt Act, 1870.

Petitions under this Act (33 & 34 Vict. c. 71), s. 55 (see further as to these above, p. 75), must be served on the Attorney-General, and the costs and expenses of the Attorney-General in resisting or appearing on any such petition, if not ordered by the Court to be paid out of the stock and dividends thereby claimed, must be paid by the National Debt Commissioners out of unclaimed dividends. Further, as to the Attorney-General's costs, see below, p. 625. A form of such a petition is printed below, p. 545.

Proceedings with regard to Letters Patent for Inventions.

These are discussed in Chapter XI., below, p. 539.

The Enforcement of Trusts against the Crown.

"The Sovereign may sustain the character of a trustee, so far as regards the capacity to take the estate, and to execute the trust; but great doubts have been entertained whether the subject can, by

legal process, enforce the performance of the trust. The right of the *cestui que trust* is sufficiently clear, but the defect lies in the remedy." (Lewin on Trusts (ed. 11), p. 29.) So Chitty, Prerog. 378: "The King may be a trustee of lands, though he cannot be compelled to execute the trust." The principle seems to be recognised in the recital to the repealed sect. 12 of the Crown Private Estate Act, 1800 (39 & 40 Geo. III. c. 88), which gave the King power to direct the execution of trusts, to which lands becoming vested in him in right of his Crown would have been liable in the hands of subjects.

The older view was that he could not be a trustee at all. "The King cannot be seised to an use, because there is no means to compel him to perform it, for the Chancery has only a delegated power from the King over the consciences of his subjects, and the King, who is the universal judge of property, and who is equally concerned for the good of all his subjects, ought to be perfectly indifferent, and not to take upon him the particular defence of any man's estate as a trustee." (Bac. Abr. Prerog. E. 1; cp. Lewin on Trusts (ed. 11), p. 2.) "The King cannot be seised to another man's use, no more can his estate be subject to any trust at this day, as the Attorney-General had said clearly, which the Court granted." (*Wikes' Case* (1610), Lane, 54.)

In an early case, however (*Pawlett v. A.-G.* (1668), Hard. 465, 469), "Baron Atkyns was strongly of opinion that the party ought in this case to be relieved against the King, because the King is the fountain and head of justice and equity, and it shall not be presumed that he will be defective in either. And it would derogate from the King's honour to imagine that what is equity against a common person should not be equity against him."

The King could not be seised to any use but his own either before or after the Statute of Uses. That this was so before the statute is shown by 1 Rich. III. c. 5; that it was so after the statute, by *Pimble's Case* (1585), Moo. 196, and *Atkins v. Longville* (1604), Cro. Jac. 50. (See 1 Cruise, Dig. 340, 350; Vin. Abr. Uses (C).)

It has been stated, however, that this does not prevent the King being a trustee. "When trusts were first introduced it was held that none but those who were capable of being seised to a use could be trustees. This has been altered, and it is now settled that the King may be a trustee, but the remedy against him is in the Court of Exchequer." (1 Cruise, Dig. 403; cp. 1 Steph. Comm. (ed. 14), 218.)

Blackstone (3 Comm. 428) also states that in cases where the King is a trustee the Court of Chancery could make no decree disposing of

or affecting his property, but such causes must be determined in the Exchequer.

But this seems to be very dubious. Thus, in *Burgess v. Wheate* (1759), 1 Eden. 177, 255, Lord Northington, L.K., said: "There is in *Pawlett v. A.-G.* a recognition of the equity without any declaration of the remedy. Whether this remedy has since been settled in the Exchequer, where alone it can, I really do not know: but I hope it is so settled."

Earl of Kildare v. Eustace (1686), 1 Vern. 437, only decided that, under the particular circumstances, "by the Act of Settlement the King was to take nothing to his own use, but was in the nature of a trustee, though contrary to the general received opinion, that the King cannot be a trustee."

Lord Hardwicke, L.C., in *Penn v. Lord Baltimore* (1750), 1 Ves. Sen. 444, 453, stated that "it is a notion established in Courts of revenue by modern decisions, that the King may be a royal trustee; and if the person, from whom the King takes by descent, was a trustee, there may be grounds in equity to support that." The point there was that the Duke of York had been a trustee before coming to the throne, and ought to be regarded as remaining so when King, and that his successors ought also to be regarded as taking the property subject to the same trusts.

In *Reeve v. A.-G.* (1741), 1 Atk. 223, Lord Hardwicke, L.C., had previously refused to make any order as to enforcing a trust upon an estate escheated to the Crown, and said that the Court of Exchequer might. Compare *Hovenden v. Lord Annesley* (1806), 2 Sch. & L. 607, 617, 618.

In *Hodge v. A.-G.* (1838), 3 Y. & C. 342; 8 L. J. Ex. Eq. 28, an equity case in the Exchequer, the Court held that all it could do was to declare certain persons equitable mortgagees of some lands which had been forfeited to the Crown, and that there was no process by which the Court could compel the Crown to convey the legal estate.

It seems fairly clear from these cases that there was no effectual means, either in the Chancery or the Exchequer, for enforcing a trust against the Crown.

It must also be observed that they are all cases of property which came into the possession of the Crown with a trust attaching to it, whether an express trust or a lien, or to which a trust attached by statute.

Again, in *Rustomjee v. R.* (1876), 1 Q. B. D. 487; 45 L. J. Q. B. 249, Blackburn, J., said: "If it were a trust, there are plenty of old authorities to which I might refer; certainly some of those referred to in Plowden's Commentaries, p. 238, in which it has been held that

the Sovereign in his body politic capacity could not be seized to a use. The use was gone when the Sovereign as the body politic got the land from the feoffee to uses, which was a gross injustice, but it was the settled law. Walsh's opinion in the instance of Richard III. is mentioned; but that in consequence of his having been feoffee to uses for a great many persons, when he became Sovereign, the matter was investigated; and it being found that by law, although he held them to the use of the subject, on his becoming Sovereign he had them to the use of the Crown, and not to the use of the subject, which would have been a gross injustice, a private Act of Parliament was passed saying that all those lands which he had held as feoffee to the use of the subject should be held in fee by the *cestui que use* exactly as if the lands had been conveyed to them. The same course was taken afterwards in framing the great Statute of Uses to carry them into execution, in exactly the same way as in that instance; but that was a strong example of how the matter was considered by the lawyers of those days, when certainly petitions of right were more known. It was held and considered that the trust was not enforceable in any way against the Crown, and there are many authorities to the same effect, which it is not necessary to go into."

In the same case, on appeal, 2 Q. B. D. 69; 46 L. J. Q. B. 238, Lord Coleridge, C.J., said: "We do not say that under no circumstances can the Crown be a trustee; we do not even say that under no circumstances can the Crown be an agent; but it seems clear to us that in all that relates to the making and performance of a treaty with another Sovereign the Crown is not, and cannot be, either a trustee or an agent for any subject whatever."

Reference may also be made to *Kinloch v. Secretary of State for India in Council* (1882), 15 Ch. D. 1; 7 A. C. 619; 49 L. J. Ch. 571; 51 L. J. Ch. 885, to *Te Teira Te Paea v. Te Roera Tareha*, [1902] A. C. 56, 72; 71 L. J. P. C. 11, and to *Pryce-Jones v. Williams*, [1902] 2 Ch. 517; 71 L. J. Ch. 762.

CHAPTER II.

PROCEDURE IN ACTIONS BY THE ATTORNEY-GENERAL WITH A RELATOR.

General Observations.

THE nature of these proceedings has been discussed in the preceding chapter. They are brought in either the Chancery Division or the King's Bench Division, but more usually in the former. It is now proposed to deal with the special matters which arise in the course of such actions.

The Control of the Attorney-General over the Proceedings.

Application of Relator for Attorney-General's Authority.

The regulations which govern the relations between the relator and the Attorney-General are printed below, p. 835.

The relator's solicitor must leave at the Law Officers' Department at the Royal Courts of Justice a copy of the writ and proposed statement of claim in duplicate. One copy must bear endorsed on the statement of claim the certificate of counsel in a form similar to that printed below, p. 543, and this copy is retained by the Attorney-General. The other copy is signed by the Attorney-General and returned to the relator's solicitor. The Attorney-General's authority must, of course, be obtained before the writ is issued. (*A.-G. v. Ironmongers' Co.* (1834), 4 L. J. Ch. 5.)

An existing action may, by amendment of the writ and statement of claim and by authority of the Attorney-General, obtained as already described, be converted into an action by the Attorney-General with a relator, without prejudice to proceedings pending in the action. (*Caldwell v. Pagham Harbour Reclamation Co.* (1876), 2 Ch. D. 221; 45 L. J. Ch. 796.)

There have been cases where the defendants have presented a memorial against the granting of authority by the Attorney-General, and the Attorney-General has heard the relator and the defendant in the matter before granting it. This was the case in *A.-G. v. Halifax Corporation* (1871), L. R. 12 Eq. 262; 41 L. J. Ch. 100, where the defendants also petitioned the Attorney-General to withdraw his fiat,

pending an appeal in the action, and a second hearing before the Attorney-General took place. The costs of all this were held to be costs in the cause.

The relator's solicitor must also certify to the Attorney-General at the time of the delivery of the writ and statement of claim to him that the proposed relator is a proper person or body to be relator, and is competent to answer the costs of the action. A form is printed below, p. 543. It was held in *A.-G. v. Knight* (1837), 3 My. & Cr. 154, that where a person was relator and also plaintiff in his own interest, the Court would not dismiss the plaintiff's bill, where the Attorney-General had directed that all proceedings should be stayed until the plaintiff had given security for costs, on the ground that the Attorney-General could have no control over the conduct of the plaintiff in the bill, whatever right he might have to control the proceedings in the information. *Sed quare*.

In *A.-G. v. Skinners' Co.* (1837), C. P. Coop. 1, a relator was ordered to give security for costs; so in *A.-G. v. Allman*, [1906] 1 I. R. 473.

The writ signed by the Attorney-General is issued as the original writ, and every copy of the writ or statement of claim served or delivered must bear a copy of his signature. (See Practice Masters' Rule 5, printed in the Annual Practice, Vol. II.)

A written authority signed by the relator, or sealed if the relator be a corporation, must be filed when the writ is issued (Ord. XVI. r. 20). Permission was given to file such authority on the following day in *A.-G. v. Murray* (1864), 41 L. T. 332; 13 W. R. 65. In *A.-G. v. Skinners' Co.* (1837), C. P. Coop. 1, 6, the Court ordered an issue to be tried whether A. had authorised B. to use his name as relator. A form of authority is printed below, p. 544.

As to the sufficiency of an authority given by a relator in proceedings under the Marriage Act, 1823, see *A.-G. v. Willshire*, [1875] W. N. 182; 45 L. J. Ch. 53.

Subsequent Proceedings.

The Attorney-General also retains control over all the subsequent substantial steps in the action. An information of this kind is a proceeding by the Attorney-General, and he has the entire control and management of it throughout (*A.-G. v. Ironmongers' Co.* (1840), 2 Beav. 313; *A.-G. v. Haberdashers' Co.* (1852), 15 Beav. 397); and therefore the relator will not be heard against the Attorney-General, nor the Attorney-General against the relator (*A.-G. v. Ironmongers' Co.* (1841), *ubi sup.*, and on appeal, Cr. & Ph. 208; 10 L. J. Ch. 201; *A.-G. v. Governors, &c. of Sher-*

borne Grammar School (1854), 18 Beav. 256; 24 L. J. Ch. 74). In *Shore v. Wilson* (1842), 9 Cl. & F. 355, however, the Attorney-General was permitted to appear for the defendants in an action by the Attorney-General with a relator. In *A.-G. v. Barker* (1838), 4 My. & Cr. 262, the relator plaintiff was not allowed to argue in person, either on behalf of the Attorney-General or in support of his own bill. A relator cannot give notice of motion on his own behalf in an action brought by the Attorney-General at his instance. (*A.-G. v. Wright* (1841), 3 Beav. 447; 10 L. J. Ch. 234.)

The following special matters must be noticed in connection with the Attorney-General's control over the proceedings:—

Amendment.

The Attorney-General's authority must be obtained to amendments of the statement of claim in the same manner as in the case of the original statement of claim. In *A.-G. v. Fellows* (1820), 1 Jac. & W. 254, an information amended without the Attorney-General's sanction was ordered to be taken off the file with costs. See also as to amendment *A.-G. v. Castleford L. B.* (1871), L. R. 6 Ch. 853; 40 L. J. Ch. 636. For form of counsel's certificate that the amendment is proper, see below, p. 543.

Discontinuance.

The Attorney-General can ask that the action should be dismissed, if he thinks fit (*A.-G. v. Ironmongers' Co.* (1840), 2 Beav. 313), notwithstanding the opposition of the relator (*A.-G. v. Wyggeston's Hospital* (1853), 16 Beav. 313. See also *A.-G. v. Brettingham* (1840), 3 Beav. 91; and *A.-G. v. Newark-upon-Trent Corporation* (1842), 1 Hare, 395; 11 L. J. Ch. 270).

If the relator wishes the proceedings to be stayed or discontinued on compromise or otherwise, he must obtain the Attorney-General's sanction. Such sanction is given or refused on a report by the Treasury Solicitor. See *A.-G. v. Wyat* (1742), Fowler, Exch. Pr. (ed. 2) II., 213, where the Court refused to dismiss an information on the relator's application till notice had been given to the Attorney-General.

Reference.

The consent of the Attorney-General is required to an application to refer an action brought by himself with a relator. (*A.-G. v. Hewitt* (1804), 9 Ves. 232; *A.-G. v. Fea* (1819), 4 Madd. 274; *Prior v. Hembrow* (1841), 8 M. & W. 873; 10 L. J. Ex. 371.)

Other Matters.

Applications are made for the Attorney-General's sanction to appoint new relators, to revive an action, to deal with funds in Court in an action, and generally, as has been said, to take any substantial step or proceeding. A defendant who is aggrieved by the behaviour of the relator, or deems his proceedings oppressive or improper, may apply to the Attorney-General for relief. (*A.-G. v. Clapham* (1853), 10 Hare, App. II., lxviii.) As to choice of venue, see below, p. 581.

Fees.

The fees payable by a relator are 5*l.* 5*s.* on the application for the Attorney-General's authority to commence the action, 3*l.* 14*s.* 6*d.* on an application for his authority to amend the statement of claim, and 3*l.* 14*s.* 6*d.* on an application for his authority to discontinue the action on compromise or otherwise.

The Relator as Co-Plaintiff.

Sir John Rigby, A.-G., issued an instruction that the relator should be joined as plaintiff in the action, wherever practicable, but this has been found not to work well in practice, and the instruction has been withdrawn. The relator, however, will still be made a co-plaintiff where he has individual interests which require representation, or where special circumstances render it, in the Attorney-General's opinion, desirable. (Compare *A.-G. v. Heelis* (1824), 2 Sim. & S. 67; *A.-G. v. Vivian* (1826), 1 Russ. 226.) As to separate appearance by the Attorney-General in proceedings under the Marriage Acts, see above, p. 475.

Change of Relators on Death, Incapacity, &c.

In *A.-G. v. Cashel Corporation* (1837), 1 Sau. & Sc. 333, new relators were substituted, on the application of the Attorney-General, where the previous relators refused to proceed. Compare *A.-G. v. Packer* (1664), Fowler, Exch. Pr. (ed. 2), II., 313, where a second information was filed, which appeared to be vexatious, and it was ordered that the Attorney-General should be attended to name a new relator.

In *A.-G. v. Cooper* (1837), 3 My. & Cr. 258, it was held that an application by a number of relators to strike out the names of several of themselves would not be granted, even though the defendants would not be prejudiced, unless it appeared, either that without the alteration justice would not be done, or that the suit could not be so conveniently prosecuted if the alteration were not made. (See also *In re Mathews*, [1905] 2 Ch. 460; 74 L. J. Ch. 656.)

If the sole relator dies or all the relators die, it has been said that the suit abates, in spite of the presence of the Attorney-General as a party. (*A.-G. of the Duchy of Lancaster v. Heath* (1690), Prec. Ch. 13; 2 Eq. Ca. Abr. 1, 70; *contra*, *Waller v. Hanger* (1614), 2 Bulst. 134.) In any event, the action should not be allowed to continue, until a new relator or relators has or have been appointed. (*A.-G. v. Haberdashers' Co.* (1852), 15 Beav. 397.) The application for leave to substitute the name of the new relator or relators (see form in Daniell, C. F. (ed. 7), p. 35) should be made by the Attorney-General, or by the new relator or relators with the sanction of the Attorney-General; it cannot be made by the defendant. (*A.-G. v. Powel* (1763), 1 Dick. 355; *A.-G. v. Plumptree* (1820), 5 Madd. 452; *A.-G. v. Brown* (1818), 1 Swanst. 265, 305, n.) In *A.-G. v. Harvey* (1855), 3 Eq. R. 992, it was held that the application could not be made by the Attorney-General, but must be made by the new relator with the Attorney-General's sanction. But this surely must be wrong. There is a special provision in this behalf in sect. 25 of the Marriage Act, 1823 (see above, p. 475).

The authority of the new relator or relators must, it would seem, be filed, as in the case of the original relator or relators (see form below, p. 544.) But where the relator or relators are plaintiff or plaintiffs, it would appear that, under the provisions of Ord. XVII., if his or their interest survives to any other relator plaintiff, no steps need be taken; if his or their interest devolves on some person not a party, that person should apply for an order to carry on proceedings. Such an application should be made, it would seem, with the sanction of the Attorney-General.

For the appointment of a proper relator, where the relator was a lunatic, see *A.-G. v. Tiler* (1765), 1 Dick. 378; 2 Eden, 230. Where a relator became insolvent between hearing and judgment, it was held that the defendants were entitled to have a new and solvent relator appointed, or to have security for past as well as future costs. (*A.-G. v. Roche* (1877), Ir. R. 11 Eq. 251.)

CHAPTER III.

PROBATE AND ADMINISTRATION.

The Will of the Sovereign.

THE Crown Private Estate Act, 1800 (39 & 40 Geo. III. c. 88), s. 4, gives power to the Sovereign, by will signed and published by the Sovereign, and attested by three or more witnesses, to devise his hereditaments of freehold, copyhold, customary and leasehold tenure, in like manner as a subject. The Crown Private Estates Act, 1862 (25 & 26 Vict. c. 37), s. 5, provides that the private estates of the Sovereign (as defined by sect. 1) in any part of the dominions, except Scotland, may be disposed of by the Sovereign in manner provided in sect. 4 of the Act of 1800, except that the testamentary disposition need not be published, and may be signed by the testator or testatrix, or by some other person in his or her presence and by his or her direction, in the presence of two witnesses. The disposition is to speak as if executed immediately before death, unless a contrary intention appears thereby.

Sect. 10 provides for the disposition by will of the Sovereign's personal estate, but subject to the payment of debts.

Sect. 6 of the same Act provides for the disposition of the Sovereign's private estates in Scotland.

Sects. 5 and 10 of the Act of 1800, and sect. 7 of the Act of 1862, provide for the descent of property not disposed of.

Sects. 8 and 9 of the Act of 1800 give a Queen Consort power to dispose of her real and personal property by deed or will during the King's lifetime as though she were a *feme sole*.

The Court has no jurisdiction to inquire into the validity of, or otherwise to deal with, the Sovereign's will. (*In the Goods of George III.* (1822), 1 Add. 255; *In the Goods of George III.* (1862), 3 Sw. & Tr. 199; 32 L. J. P. 15.) In the former of these cases the matter of the Sovereign's will and the devolution of his property is elaborately discussed.

As to the non-conveyance of certain demesne lands of the Crown by the will of Henry VIII., see *A.-G. v. Dean and Canons of Windsor* (1860), 8 H. L. C. 369; 30 L. J. Ch. 529.

By sect. 3 of the Crown Private Estates Act, 1873 (36 & 37 Vict. c. 61), all proceedings with regard to any personal estate or effects, which are subject to disposition by the will of the King, may be prosecuted on behalf of the Crown by and in the name or names of any person or persons to be from time to time for that purpose appointed by the King in writing under the Sign Manual.

The Right of the Crown to Lapsed Personality.

Personalty of an Intestate without Next of Kin.

The personal estate of an intestate who leaves no next of kin, or no known next of kin, belongs absolutely to the Sovereign for the time being as part of the droits of the Crown. (*A.-G. v. Köhler* (1861), 9 H. L. C. 654, 670.) It is vested in the King in right of his Crown as *bona vacantia*. (*Dyke v. Walford* (1846), 5 Moo. P. C. 434, 495, 496; compare *In re Barnett's Trusts*, [1902] 1 Ch. 847; 71 L. J. Ch. 408.)

Where the domicile of the deceased is the Duchy of Lancaster, the Crown is entitled in right of the Duchy, and administration is to be granted to the Crown's nominee in such right. (*Dyke v. Walford*, *ubi sup.*) In certain liberties of the Duchy, however, the property belongs to the King in right of his Crown. (Revenue, Friendly Societies and National Debt Act, 1882 (45 & 46 Vict. c. 72), s. 24.)

In the Duchy of Cornwall, the right belongs apparently to the Duke of Cornwall for the time being, and the grant is made to the Solicitor of the Duchy. (*Solicitor of the Duchy of Cornwall v. Canning* (1880), 5 P. D. 114, and cases there cited; *In the Goods of Griffith* (1884), 9 P. D. 63; 53 L. J. P. 30.)

In *Reynolds v. Wright* (1860), 30 L. J. Ch. 381, the Treasury Solicitor, as administrator for the Crown, took a freehold lease for lives devised to trustees on trust for an illegitimate person and his heirs, on the death of the *cestui que trust*.

The Crown, of course, only takes subject to the debts of the deceased. (*Megit v. Johnson* (1780), 2 Doug. 542, 548; *Kane v. Reynolds* (1854), 4 D. M. & G. 565; 24 L. J. Ch. 321.)

The Crown's right has been held to extend to an English fund belonging to a foreigner domiciled abroad. In *In re Barnett's Trusts*, [1902] 1 Ch. 847; 71 L. J. Ch. 408, an Austrian, who was entitled to a fund in Court in England, died in Austria, a bastard and intestate. By Austrian law the succession of an Austrian citizen in such a case is taken by the fiscus. It was held that the right of the

Crown was not a succession, but a right to the property as *bona vacantia*, and therefore the maxim, "*mobilia sequuntur personam*," did not apply, and the Crown and not the Austrian fiscus took the property.

As to the effect of the acquisition of a foreign domicile on the disposition of the personalty of a British subject, who was a bastard by English law but not by the law of her domicile of origin, see *In re Johnson*, [1903] 1 Ch. 821; 72 L. J. Ch. 682.

The Crown also takes where the personal estate is vested in a mere trustee upon trusts which have failed. In *In re Higginson and Dean*, [1899] 1 Q. B. 325, 329; 68 L. J. Q. B. 198, the Court said: "From the time of Lord Thurlow's decision in *Middleton v. Spicer*, 1 Bro. C. C. 201, in 1783, it has been an accepted proposition of law that chattels, real and personal, vested in a person as a mere trustee upon private trusts which have failed, are, as a general rule, held by him as a trustee for the Crown of *bona vacantia*, and during all the period which has elapsed since that decision no exception from the rule seems to have been established. It has been illustrated by many cases which show that the possession conferred on the trustee for purposes of jurisdiction or administration gives him no beneficial title, as by occupancy or otherwise, which he can conscientiously set up against the Crown. Such cases are: *Barclay v. Russell* (1797), 3 Ves. 324, per Lord Loughborough; *Powell v. Merrett* (1853), 1 Sm. & G. 381; 22 L. J. Ch. 408, Stuart, V.-C.; *Cradock v. Owen* (1854), 2 Sm. & G. 241, Stuart, V.-C.; *Read v. Stedman* (1859), 26 Beav. 495; 28 L. J. Ch. 481, Romilly, M.R.; *Cunnack v. Edwards*, [1896] 2 Ch. 679; 65 L. J. Ch. 801, C. A." See also *In re Printers and Transferrers Amalgamated Trades Protection Society*, [1899] 2 Ch. 184; 68 L. J. Ch. 537.

Where, however, by a marriage settlement, the wife's property was settled on her and her husband and their issue, and, in default of issue, on the wife's next of kin, and the wife, who was illegitimate, died without issue and her husband administered to her, it was held that the Crown was not entitled to the fund, but that it belonged to the husband as administrator to his wife. (*Hawkins v. Hawkins* (1834), 7 Sim. 173; 4 L. J. Ch. 9.) See *Anon.* (1858), 1 Giff. 392.

As to the Crown's rights in respect of realty devised in trust for sale, see above, p. 427.

The right of executors to retain undisposed-of residue as against the Crown has been discussed in a great number of cases, which have resulted in the establishment of rules of a somewhat artificial character. The matter was summed up in the most recent case, *In re Glukman*, [1907] 1 Ch. 171; 76 L. J. Ch. 82. The executors are

beneficially entitled, unless the will shows a contrary intention. The matter is not affected by the Executors Act, 1830 (11 Geo. IV. & 1 Will. IV. c. 40), and the burden is on the Crown to show that the executors do not take beneficially. Contrary intention has been held to be shown where only one executor has been appointed, and a pecuniary legacy has been given to him, because a gift of part to an executor bars him from the whole (*Dicks v. Lambert* (1799), 4 Ves. 725); or where several executors have been appointed and pecuniary legacies of equal amount have been given to each, because where executors are intended to take the whole residue beneficially, no reason exists for giving a part to them equally. (See *Cradock v. Owen* (1854), 2 Sm. & G. 241; *Saltmarsh v. Barrett* (1861), 3 D. F. & J. 279; 30 L. J. Ch. 853.) But the executors take beneficially where specific legacies of unequal value have been given to some of the executors in addition to such equal pecuniary legacies (*In re Glukman*, [1908] W. N. 46, reversing [1907] 1 Ch. 171; 76 L. J. Ch. 82); or where pecuniary legacies of unequal amounts have been given to them, or where pecuniary legacies have been given to some of them only. (See cases cited in *In re Glukman*, *ubi sup.*, and *Read v. Stedman* (1859), 26 Beav. 495; 28 L. J. Ch. 481.) In *In re Bacon's Will* (1886), 31 Ch. D. 460; 55 L. J. Ch. 368, where a testatrix without next of kin made a will on a printed form, leaving blanks for the names of the persons to whom she devised and bequeathed her property, and appointed an executor to pay her debts, &c., it was held that under the circumstances the executor was entitled to bring parol evidence to show that the testatrix intended him to take the residue for his own benefit.

Personalty of an Extinct Corporation Aggregate.

The Crown is entitled to the personal estate of a dissolved corporation aggregate, whether in the hands of trustees or not, and also, apparently, to the debts which were due to such corporation. The question was recently discussed in *In re Higginson and Dean*, [1899] 1 Q. B. 325; 68 L. J. Q. B. 198, where the Crown was held to be entitled to the dividend which would have accrued to a dissolved corporation as being *bona vacantia*. The corporation had proved in a bankruptcy, and had subsequently been dissolved, and the dividend consisted of the proceeds of certain shares in the hands of the official receiver as trustee in the bankruptcy. Wright, J., delivering the judgment of the Court, said: "Nor, I think, is there any authority for holding that the Crown is in any worse position in relation to chattels held in trust for a corporation which has become dissolved than in relation to chattels held in trust for a natural person

deceased. The same principle seems applicable in both cases. The Courts will not allow a person who has obtained title or possession as a mere trustee of chattels to set up unconscientiously any beneficial title by occupancy, possession, or otherwise. The text-books, such as those of Kyd, Grant, and Lewin, agree, though in some cases with an 'it seems,' that the Crown is entitled to the personal estate of a dissolved corporation aggregate." He then discussed the position of a debt, which had been due to a dissolved corporation, but suggested a doubt whether the Crown could actually sue to recover such a debt, unless it could allege a trust. *Sed quære*, whether this doubt is justified. It may be that such a debt is not strictly *bonum vacans*, but then neither is personal property in the hands of a trustee; and if the Crown succeeds to the right of the dissolved corporation to be paid the latter, there does not seem to be good reason for suggesting that it does not equally succeed to a similar right, namely, the right to recover in respect of the former. The principle was held not to apply to chattels real in *Hastings Corporation v. Letton*, [1908] 1 K. B. 378; 77 L. J. K. B. 149. *Sed quære*.

As to the Crown's rights in respect of the real estate of a dissolved corporation, see above, p. 421.

A form of English information claiming such property is printed above, p. 310.

Administration on behalf of the Crown.

Administration by the Treasury Solicitor, and the Solicitors of the Duchies of Lancaster and Cornwall.

Administration on behalf of the Crown is taken out either by the Treasury Solicitor, or by the Solicitor of the Duchy of Lancaster, according as the King is entitled in right of his Crown, or in right of his Duchy of Lancaster. The constitution and general position of these two officials is discussed in the articles upon them above, pp. 16, 20.

With regard to grants to the Solicitor of the Duchy of Cornwall on behalf of the Duke of Cornwall, see above, pp. 20, 492.

The Treasury Solicitor Act, 1876 (39 & 40 Vict. c. 18) (printed below, p. 713, and which, by sect. 6, is retrospective), by sect. 2, provides that where, by reason of the King's having become entitled in right of his Crown to the personal estate of an intestate or otherwise, any Court has power to grant administration of the personal estate of any deceased person to a nominee of the King, and the King by warrant under the Sign Manual is pleased to nominate the Treasury Solicitor for the purpose, the Court may grant such administration for the use of the Crown to the Treasury Solicitor,

by his official name of Solicitor for the affairs of His Majesty's Treasury, and his successors, or, if the warrant so provide, to some person nominated in that behalf by the Treasury Solicitor.

The same section gives the King power to grant such a warrant specially or generally, and with or without limitations. It is now the practice to grant a general warrant to the Treasury Solicitor, which is printed below, p. 546. A special warrant is prepared for any case which does not fall within it. There are also four other general warrants, dealing with cases where the Treasury Solicitor does not administer himself.

The present practice with regard to the Solicitor for the Duchy of Lancaster is set out in a note to *In the Goods of Best*, [1901] P. 333; 71 L. J. P. 9. As to the warrant in the case of the Duchy of Cornwall, see *In the Goods of Griffith* (1884), 9 P. D. 63; 53 L. J. P. 30.

Administration (by sect. 7) means letters of administration of the personal estate and effects of a deceased person, whether general or limited, or with the will annexed or otherwise, and includes confirmation in Scotland.

The Court retains the right to limit the grant and to revoke it (sect. 2).

The Crown is not bound by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1, and consequently the Treasury Solicitor, and also the Solicitor of the Duchy of Lancaster (see *In the goods of Best, ubi sup.*), is only granted administration of the personal estate, as before the Act. (*In the goods of Hartley*, [1899] P. 40; 68 L. J. P. 16; see also *In the goods of John Ball*, [1902] W. N. 226.) It follows from this that a creditor of a bastard or person having no known relatives takes a grant of the personal estate only. (See *In the goods of Savard* (1899), cited in Coote and Tristram, Prob. Pr. (ed. 14), 78.)

Where the deceased is a person who has died intestate without known relatives, the Crown's nominee or the Solicitor of the Duchy of Cornwall should cite the next of kin (if any) and all other persons having any interest in the estate. Their application for a grant is made by motion. As to the exhibition of an inventory, see below, p. 547. Where persons claiming to be entitled appear, the Treasury Solicitor pleads, claiming administration, and the matter proceeds in the ordinary way. (See below, p. 547, and *Treasury Solicitor v. White* (1886), 55 L. J. P. 79.) Where part of the personal estate has been disposed of by will, the Crown, unless with the consent of the persons interested under the will, is only entitled to a grant of the remainder. (*In the goods of Rhoades* (1866), L. R. 1 P. & M. 119; 35 L. J. P. 125.)

It was held, in *In the goods of Beavan* (1865), L. R. 1 P. & M.

15; 35 L. J. P. 25, that the Treasury Solicitor could not obtain administration of a seaman's goods without complying, like any other applicant, with 11 Geo. IV. & 1 Will. IV. c. 20, s. 56 (now repealed).

For a grant *ad colligenda bona* to the Treasury Solicitor, see *In the Goods of Oddy* (1890), 62 L. T. 643.

Where there is real doubt as to the existence of next of kin, the safest course is that the Treasury Solicitor as administrator should commence administration proceedings, making the Attorney-General defendant, in which proper inquiries may be made.

The Treasury Solicitor and the Solicitors of the Duchies of Lancaster and Cornwall may also apply for a revocation of letters of administration already granted. A form of writ in such a proceeding is printed below, p. 549.

Sect. 2 of the Treasury Solicitor Act, 1876, further provides that such grant and the rights and duties thereunder continue to subsequent Treasury Solicitors without further grant. There is no similar provision in the cases of the Solicitors of the Duchies of Lancaster and Cornwall. Consequently, we find in *In the Goods of Best*, [1901] P. 333; 71 L. J. P. 9, where the Solicitor of the Duchy of Lancaster, who was the original grantee, had died, a grant *de bonis non* was granted to his successor, and, Her late Majesty having also died since the grant, the King's warrant for the application and the consent of Her late Majesty's executors were filed in the Registry. In other cases cited in a note to the report fresh grants were made.

An administration bond is not given by the Treasury Solicitor or the Solicitor of the Duchy of Lancaster (Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 81), but they are declared to be respectively subject to the liabilities and duties, which are imposed by such a bond in the case of a private individual, by sects. 2 and 9 (1) of the Treasury Solicitor Act, 1876, and Sched. II. thereto. The Crown and Treasury Solicitor for Ireland is exempted from the necessity of giving a bond by the Court of Probate (Ireland) Act, 1857 (20 & 21 Vict. c. 79), s. 86.

In the case of a grant to the Solicitor of the Duchy of Cornwall, the Court in *Solicitor of the Duchy of Cornwall v. Canning* (1879), 5 P. D. 114, required that the usual bond should be given, but dispensed with sureties, and the same course was followed where the grant was made to a nominee of the Board of Education in *In the Estate of Bryan*, [1905] P. 88; 74 L. J. P. 41.

The general position of the Treasury Solicitor as administrator on behalf of the Crown is discussed in *A.-G. v. Köhler* (1861), 9 H. L. C. 654, where it was held that the nominee of the Crown taking out administration to the estate of an intestate is under the same obliga-

tion as any other administrator (the statute 15 & 16 Vict. c. 3 there referred to being now replaced by sect. 2 of the Treasury Solicitor Act, 1876, which is in similar terms), and that, if he improperly (an expression which includes mistakenly) pays to the Crown part of the intestate's effects, though such payment is made under authority of a warrant under the Sign Manual, he makes himself personally liable to restore it to parties who afterwards prove themselves to be legally entitled. This principle will extend to the Solicitor of the Duchy of Lancaster, and *a fortiori* to the Solicitor of the Duchy of Cornwall.

See also the cases on the payment of interest by the Crown cited below, p. 500.

The decisions must, however, be now read subject to the provisions of sect. 4 of the Act of 1876 (p. 714), and the rules made under sect. 5 of that Act (p. 714). That section and those rules provide for the manner in which the moneys received by the Treasury Solicitor under the Act of 1876 are to be dealt with, and what accounts are to be kept and what returns made. The reader is referred to their terms (p. 831).

In particular, sect. 4 (3) of the Act provides that the Treasury may direct securities and property not claimed within three years (Rule 9) to be sold, and the proceeds and any money not claimed within that period to be paid to the Crown's Nominee Account, and that, if any person satisfies the Treasury of his right to any part of such unclaimed money, securities, or property, the Treasury may direct the sum so paid to the Crown's Nominee Account to be paid to such person out of the Consolidated Fund or the growing produce thereof.

In Scotland, all powers and authorities for the ascertaining, recovering and managing of all rights and interests of His Majesty in right of his Crown in Scotland as *ultimus heres*, or in cases of bastardy, or by reason of forfeiture, are vested in the Treasury. (Crown Lands (Scotland) Act, 1835 (5 & 6 Will. IV. c. 58), s. 1.)

The Treasury Solicitor and the Solicitors of the Duchies of Lancaster and Cornwall as Defendants.

The Probate Rules for Non-Contentious Business 75 and 76 (St. R. & O. Rev., Vol. 12, p. 769) provide that in all cases where application is made for letters of administration (either with or without the will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or a widow without issue, or of a person dying without known relations, notice of such application is to be given to the Treasury Solicitor or, in case the deceased died domiciled within the Duchy of Lancaster, to the Solicitor of the Duchy in London, in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take. In the case

of persons dying intestate, without any known relative, the citation issued against next of kin (if any) and persons claiming interest, must also be served on the Treasury Solicitor or the Solicitor of the Duchy, as the case may require. (See *In the goods of Brown* (1859), 28 L. J. P. 126.) These provisions are applied to cases in district registries by Rules 88, 89 of the Rules relating thereto (St. R. & O. Rev., Vol. 12, p. 844).

The Treasury Solicitor or the Solicitor of the Duchy of Lancaster, as the case may be, ought to be made defendant where the testator was one of the class of persons above mentioned, and where a decree of probate in solemn form is sought, and in such a case either of them, and, *semble*, the Solicitor of the Duchy of Cornwall, may put the executor or other person interested under a will to proof of the will in solemn form. Compare *Dixon v. Treasury Solicitor*, [1905] P. 42; 74 L. J. P. 33.

Forms of pleadings are printed below, pp. 549, 550.

As to the necessity of setting out a pedigree in answer to the Treasury Solicitor's allegation of bastardy, see *Dyke v. Williams* (1862), 2 Sw. & Tr. 465; 31 L. J. P. 90; and *Dyke v. Wallis* (1862), 2 Sw. & Tr. 466; 31 L. J. P. 97.

In *Queen's Proctor v. Williams* (1862), 4 Sw. & Tr. 221; 31 L. J. P. 86, a trial by jury of the issue was ordered on the application of the next of kin, in spite of the opposition of the Queen's Proctor.

The Attorney-General as a Party.

The Attorney-General should be cited or be made a party, as the case requires, where the proceedings affect a general charitable bequest (as in *Boughey v. Minor*, [1893] P. 181; 63 L. J. P. 104); or where, owing to the terms of the will, or for other reasons, charities which may be affected by the proceedings are not or cannot be properly represented; for instance, if a charity, to which the deceased made a bequest, is improperly described in the will, and it may be that the bequest should be applied *cy-près*. In this behalf the remarks which have been made above (p. 477), as to the position of the Attorney-General as a defendant in Chancery proceedings in connection with charities, may be applied, *mutatis mutandis*, to probate proceedings. A precedent of the pleadings in such a case is printed below, p. 552. When cited, the Attorney-General usually puts in a defence, which, in most cases, sets out the charitable interest involved, and prays the Court to look after the interests of the Crown. (See below, p. 555.) In *University College of North Wales v. Taylor*, [1907] P. 228; [1908] P. 140; 76 L. J. P. 49; 77 L. J. P. 20, when defendant, he pleaded that he was not sufficiently informed, and made no admissions.

Government Departments as Parties.

Where a Government Department is interested in the subject-matter of proceedings, and if it has power by its constitution to sue and be sued, it will appear in the same manner as an individual. If it cannot sue or be sued, it would seem that it ought to appear by the Attorney-General on behalf of the Crown. Thus, in *In the goods of Bryan, Board of Education v. Reubell* (1904), 20 T. L. R. 290, the Board of Education, as residuary legatees, claimed to have a will established as against the alleged next of kin; and in *Taylor v. Smith* (1903), not reported, the Governors of Queen Anne's Bounty were cited as being legatees, supported the claim of the plaintiffs, and claimed to have the will propounded by them established.

Recovery of Personal Estate by and from the Crown.

By sect. 2 of the Intestates Estates Act, 1884 (47 & 48 Vict. c. 71) (p. 735), where the administration of the personal estate of any deceased person is granted to a nominee of the Crown, any action or other proceeding by or against such nominee for the recovery of such personal estate is to be of the same character, and conducted in the same manner, and subject to the same rules of limitation, as if the administration had been granted to such nominee as one of the next of kin of the deceased. By sect. 3, informations or other proceedings by the Crown, and petitions of right by the subject, in respect of the personal estate of a deceased person, are to be prosecuted within the same time, and subject to the same rules of law and equity, as an action for the like purpose by or against a subject.

When personalty is recovered from the Crown's nominee by persons entitled, the Crown must restore the fund with interest, *semble*, at 3 per cent. (*Rowlls v. Bebb*, [1900] 2 Ch. 107; 69 L. J. Ch. 562). Such interest was held to run, at 4 per cent., from the date when the Treasury Solicitor sold the stock and paid the proceeds into the Treasury, in *Turner v. Maule* (1849), 3 De G. & Sm. 497; 18 L. J. Ch. 454; from the period when all payments on behalf of the estate had been made and there was no longer any necessity for retaining balances, in *Re Dewell* (1858), 4 Drew. 269; 27 L. J. Ch. 562. These cases were followed, as to the payment of interest, in *A.-G. v. Köhler* (1861), 9 H. L. C. 654, and see *Partington v. A.-G.* (1869), L. R. 4 H. L. 100; 38 L. J. Ex. 205. But in *In re Gosman* (1881), 17 Ch. D. 771; 50 L. J. Ch. 624, the Crown was held not to be chargeable with interest on rents and profits received by it from leaseholds, which were afterwards recovered from it by petition of right.

These decisions are now subject, *pro tanto*, to the limitation of time imposed by sects. 2, 3 of the Intestates Estates Act, 1884, cited above.

CHAPTER IV.

DIVORCE AND NULLITY OF MARRIAGE.

By sect. 5 of the Matrimonial Causes Act, 1860 (23 & 24 Vict. c. 144), made perpetual by 25 & 26 Vict. c. 81, "In every case of a petition for a dissolution of marriage it shall be lawful for the Court" [this includes the Court of Appeal, see *Le Sueur v. Le Sueur* (1877), 2 P. D. 79], "if it shall see fit, to direct all necessary papers in the matter to be sent to His Majesty's Proctor, who shall, under the direction of the Attorney-General, instruct counsel to argue before the Court any question in relation to such matter, and which the Court may deem it necessary or expedient to have fully argued; and His Majesty's Proctor shall be entitled to charge and be reimbursed the costs of such proceeding as part of the expense of his office." By sect. 7 of the same Act, "at any time during the progress of the cause or before the decree is made absolute," which, by the Matrimonial Causes Act, 1866 (29 & 30 Vict. c. 32), s. 3, is not less than six months from the date of the decree *nisi*, unless the Court fixes a shorter time, "any person may give information to His Majesty's Proctor of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney-General may deem necessary or expedient; and if from any such information or otherwise the said Proctor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may, under the direction of the Attorney-General, and by leave of the Court, intervene in the suit, alleging such case of collusion, and retain counsel and subpoena witnesses to prove it."

These provisions are extended to proceedings for nullity of marriage by the Matrimonial Causes Act, 1873 (36 & 37 Vict. c. 31), s. 1. Previously the Queen's Proctor could not intervene in such cases. (*D. v. M.* (1873), 28 L. T. 73; 21 W. R. 417.)

By the Matrimonial Causes Rules 68, 69 (St. R. & O. Rev., Vol. 12, p. 877), the King's Proctor shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the Registry

shall deliver a copy thereof to the petitioner or his solicitor. All subsequent pleadings and proceedings in respect to the King's Proctor's intervention in a cause shall be filed and carried on in the same manner as the Rules direct in respect of the pleadings and proceedings of the original parties to the cause.

Where the King's Proctor desires to show cause against making absolute a decree *nisi*, by Rule 202 of the Matrimonial Causes Rules (St. R. & O. Rev., Vol. 12, p. 896), he shall enter an appearance in the cause in which such decree has been pronounced, and shall within fourteen days after entering appearance file his plea in the Registry, setting forth the grounds on which he desires to show cause, and on the day he so files his plea shall deliver a copy thereof to the person in whose favour such decree has been pronounced, or to her or his solicitor, and all subsequent pleadings and proceedings in respect of such plea shall be carried on in the manner directed by Rules 68 and 69 above. See form of plea below, p. 556.

In *Bowen v. Bowen* (1864), 3 Sw. & Tr. 530; 33 L. J. P. 129, the Queen's Proctor entered an appearance without the leave of the Court as one of the public; see also *Masters v. Masters* (1864), 34 L. J. P. 7; *Boulton v. Boulton* (1862), 2 Sw. & Tr. 551; 31 L. J. P. 76. When he intervenes in his official capacity he must have the leave of the Court. (*Gray v. Gray* (1861), 30 L. J. P. 96; *Hudson v. Hudson* (1875), 1 P. D. 65; 45 L. J. P. 39.) Leave is obtained by motion without affidavit. (*Anon.* (1861), 2 Sw. & Tr. 249; 30 L. J. P. 88.)

As to the circumstances under which the Court will send the papers in a suit to the King's Proctor with a view to his intervention, see *Stevens v. Stevens* (1890), 61 L. T. 844; *Boulton v. Boulton* (1861), 2 Sw. & Tr. 405; 31 L. J. P. 27. See also cases where the Court has requested the King's Proctor to intervene for the purpose of argument, such as *Sottomayer v. De Barros* (1879), 2 P. D. 81; 3 P. D. 1; 5 P. D. 94; 46 L. J. P. 43; 47 L. J. P. 23; 49 L. J. P. 1; and *Dodd v. Dodd*, [1906] P. 189; 75 L. J. P. 49.

Where the petitioner does not appear and oppose, or does not offer evidence, the Court will rescind the decree *nisi* and dismiss the petition, on motion by the King's Proctor (see *Pollack v. Pollack* (1863), 4 Sw. & Tr. 266; 34 L. J. P. 49; *Sheldon v. Sheldon* (1865), 4 Sw. & Tr. 75; 34 L. J. P. 80), and the same course will be pursued where the petitioner admits the King's Proctor's allegations in his reply. (*Boulton v. Boulton* (1861), 31 L. J. P. 115.)

Where the parties have resumed cohabitation after the decree *nisi*, the King's Proctor, without filing a plea, proceeds by motion that the decree *nisi* may be rescinded, on affidavits by the petitioner and

respondent proving that they have so resumed cohabitation. (*Flower v. Flower*, [1893] P. 290; 63 L. J. P. 28.)

If the Attorney-General thinks fit, the King's Proctor may be directed to have the divorce or nullity suit watched, to ensure that material facts within his knowledge are brought to the notice of the Court. (*Hudson v. Hudson* (1875), 1 P. D. 65; 45 L. J. P. 39.)

The general object of the statutory provisions, and the position of the King's Proctor under them, were discussed in *Gladstone v. Gladstone* (1875), L. R. 3 P. & M. 260; 44 L. J. P. 46, which must be read with *Howarth v. Howarth* (1884), 9 P. D. 218; *Crawford v. Crawford* (1886), 11 P. D. 150; 55 L. J. P. 42; and *Hunter v. Hunter*, [1905] P. 217; 74 L. J. P. 157. He must act reasonably and not vexatiously. (*Conradi v. Conradi* (1867), L. R. 1 P. & M. 514; 37 L. J. P. 55.)

Collusion occurring after the decree *nisi* is as much a reason for rescission as if it had occurred before the decree. (*Rogers v. Rogers*, [1894] P. 161; 63 L. J. P. 97.)

There is no impropriety in facts being furnished to the King's Proctor by a respondent or co-respondent. (*St. Paul v. St. Paul* (1869), L. R. 1 P. & M. 739; but see *Pattenden v. Pattenden* (1869), 19 L. T. 612.)

As to the meaning of "collusion" in sect. 7 of the Act of 1860, see *Churchcard v. Churchcard*, [1895] P. 7; 64 L. J. P. 18; and *Hunter v. Hunter*, [1905] P. 217; 74 L. J. P. 157.

Where the King's Proctor intervenes under sect. 7 of the Act of 1860 and alleges collusion, he may in the same plea allege the suppression of material facts or any other matters in opposition to the decree. (*Dering v. Dering* (1868), L. R. 1 P. & M. 531; 37 L. J. P. 52.) It is sufficient for him to allege that the decree was pronounced contrary to the justice of the case by reason of material facts not being brought to the knowledge of the Court (*Crawford v. Crawford* (1886), 11 P. D. 150); but the petitioner is entitled to particulars of such facts if they are not specified. (*Barnes v. Barnes* (1867), L. R. 1 P. & M. 505; 37 L. J. P. 4; *Gladstone v. Gladstone* (1875), 23 W. R. 519.)

He is also entitled to particulars of collusion, but it will be enough if the King's Proctor specifies the nature of the collusion charged, without stating the facts which he proposes to prove (*Jessop v. Jessop* (1861), 2 Sw. & Tr. 301; 30 L. J. P. 193), and he may give such particulars by stating that the collusion consisted in withholding certain material facts, and that such facts are set out in the particulars given at the same time as to other pleas. (*Gladstone v. Gladstone* (1875), L. R. 3 P. & M. 260; 44 L. J. P. 46.) Where the

King's Proctor delivered particulars of adultery, in which, for the first time, adultery was alleged with an additional person, the particulars of this last adultery were ordered to be struck out. (*Pierce v. Pierce* (1892), 66 L. T. 861.)

The fact that the respondent has alleged adultery against the petitioner, and failed to prove it, does not debar the King's Proctor from setting it up on his intervention. (*Harding v. Harding* (1864), 4 Sw. & Tr. 145; 34 L. J. P. 108.)

The Court has no power to allow the person, with whom the King's Proctor alleges that adultery has been committed, to intervene in the proceedings. (*Grieve v. Grieve*, [1893] P. 288; 63 L. J. P. 29; *Carew v. Carew*, [1894] P. 31; 63 L. J. P. 74.)

Where the King's Proctor intervened and alleged collusion and the adultery of the petitioner, he was held to be entitled to cross-examine all the witnesses called by the petitioner and the respondent, and also the respondent. (*Boardman v. Boardman* (1866), L. R. 1 P. & M. 233.) As to his position with reference to the issue between the petitioner and respondent, where his plea raised an issue, which was tried at the same time, that the petition had been filed by arrangement between the petitioner and the respondent, see *Jessop v. Jessop* (1861), 2 Sw. & Tr. 301; 30 L. J. P. 193; *Studholme v. Studholme* (1877), 25 W. R. 165.

As to the method of trial of the issues on the King's Proctor's intervention, see *Harding v. Harding* (1864), 34 L. J. P. 9; *Gethin v. Gethin* (1861), 2 Sw. & Tr. 406.

It has been said that the Court does not require such strict proof of the identity of the person charged with adultery on the King's Proctor's intervention as in the trial of a suit between husband and wife. (*Hulse v. Hulse* (1871), L. R. 2 P. & M. 357; 41 L. J. P. 19.)

As to the right to reply on behalf of the King's Proctor in certain circumstances, see *Marris v. Marris* (1862), 2 Sw. & Tr. 530; 31 L. J. P. 69; *Conradi v. Conradi* (1867), L. R. 1 P. & M. 514; 37 L. J. P. 55; *Dering v. Dering* (1868), L. R. 1 P. & M. 531; 37 L. J. P. 52.

The petitioner will not in general be allowed, after the intervention of the King's Proctor, to withdraw his petition (*Gray v. Gray* (1861), 2 Sw. & Tr. 266; 30 L. J. P. 119), or to amend it into a petition for judicial separation (*Drummond v. Drummond* (1861), 2 Sw. & Tr. 269; 30 L. J. P. 177), though the Court may allow him to do so if proper provision is made for the King's Proctor's costs. See the cases cited below, p. 630, where costs on the intervention of the King's Proctor are discussed generally.

As to discovery by the King's Proctor, see below, p. 600.

CHAPTER V.

PROCEEDINGS UNDER THE LEGITIMACY DECLARATION ACT, 1858,
AND THE GREEK MARRIAGES ACT, 1884.

Proceedings under the Legitimacy Declaration Act, 1858.**The Nature of the Proceedings.**

THIS Act (21 & 22 Vict. c. 93), which is printed below, p. 674, provides means whereby (a) any natural-born subject of the King, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate in England, may apply by petition in the Probate, Divorce and Admiralty Division for a decree declaring that he is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring any of these matters; and such person may in like manner apply for a decree that his own marriage was a valid marriage (sect. 1); (b) any person domiciled in England or Ireland, or claiming any real or personal estate in England, may apply in like manner, with or without an application in the same petition under sect. 1, for a decree declaratory of his right to be deemed a natural-born subject of the King (sect. 2).

Every decree made by the Court (sects. 1, 2, 8) is to be valid and binding to all intents and purposes upon the Crown and all persons whomsoever, but is not to prejudice any person, unless such person has been cited or made a party, or is the heir-at-law or next of kin, or other real or personal representative of, or derives title through, a person so cited or made a party, nor is it to prejudice any person, if subsequently proved to have been obtained by fraud or collusion.

Sect. 9 of the Act applies the provisions of sect. 2 to Scotland. Similar proceedings in Ireland are governed by the Legitimacy Declaration Act (Ireland), 1868 (31 & 32 Vict. c. 20).

The Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), is applied, by sect. 4 of the Act of 1858, to legitimacy declaration proceedings,

and Rule 174 of the Matrimonial Causes Rules (St. R. & O. Rev., Vol. 12, p. 892) applies those Rules to such proceedings so far as they may be applicable.

The Petition.

Precedents of the pleadings on an application under this Act are printed below, p. 557. See also *Shedden v. A.-G.* (1860), 2 Sw. & Tr. 170; 30 L. J. P. 217, for a form of petition. The proper title of such proceedings in Ireland was discussed in *A. B. v. A.-G.* (1869), Ir. R. 4 Eq. 56. Where the proceedings are instituted by one who claims real estate in England, circumstances may be stated in the petition to support such claim. (*Mansel v. A.-G.* (1877), 2 P. D. 265; 46 L. J. P. 64.)

A claim for a declaration of legitimacy must be made by petition under the Act, and cannot be joined with a claim for probate in a probate action. (*Warter v. Warter* (1890), 15 P. D. 35; 59 L. J. P. 45.)

The Court has no power to make a decree establishing the legitimacy of a petitioner's grandfather, and it struck out so much of a petition as prayed for a declaration that the petitioner's father was the legitimate child of the petitioner's grandfather. (*Dodds v. A.-G.* (1880), 42 L. T. 402; 28 W. R. 278.) Nor can it decide a claim to a title of honour. (*Frederick v. A.-G.* (1874), L. R. 3 P. & M. 196; 43 L. J. P. 32.)

A petition on behalf of an infant must be presented by a guardian assigned to him by the Court (*In re Upton's Petition* (1860), 6 Jur. (N. S.) 404), and the Court will not appoint a guardian until it has referred the matter to the registrar to inquire whether the proceeding is likely to be for the benefit of the infant. (*In re Chaplin's Petition* (1867), L. R. 1 P. & M. 328; 36 L. J. P. 49, 90.)

The petition must be accompanied by an affidavit, which is to be filed with it, made by the petitioner, verifying the facts of which he or she has personal cognisance, and deposing as to his belief in the truth of the other facts alleged in the petition. (Sect. 3 of the Act of 1858; Matrimonial Causes Rule 2 (St. R. & O. Rev., Vol. 12, p. 869).)

The Attorney-General as Respondent.

The Attorney-General is to be a respondent upon the hearing of the petition, and a copy thereof, and of the affidavit accompanying it, must be delivered to him at least one month before the presentation or filing of the petition. (Sect. 6 of the Act of 1858.) Petitioners have a right to have their case heard as between themselves and him,

and the parties cited *pro interesse suo* cannot sustain a plea of *res judicata* as between themselves and the petitioners in bar of the whole proceeding. (*Shedden v. A.-G.* (1860), 2 Sw. & Tr. 170; 30 L. J. P. 217.)

The Attorney-General's answer should be a formal traverse of the allegations in the petition. (*Ryves v. A.-G.* (1865), L. R. 1 P. & M. 23; 35 L. J. P. 6.) See the precedent printed below, p. 558. But in *A. B. v. A.-G.* (1869), Ir. R. 4 Eq. 56, it was said, in Ireland, that an answer on the part of the Attorney-General was not necessary.

Citation of Parties.

Such person or persons (if any), besides the Attorney-General, as the Court thinks fit, shall be cited to see proceedings, or otherwise summoned in such manner as the Court directs, and may be permitted to become parties to the proceedings and oppose the application (sect. 7 of the Act of 1858). It is for the petitioner, and not for the Court, to take upon himself to decide who should be cited, and to ask leave to cite such persons, showing sufficient reason why they should be selected. (*In re Shedden* (1859), 5 Jur. (N. S.) 151; *Upton v. A.-G.* (1863), 32 L. J. P. 177.) The petitioner must lay the state of the case, by affidavit or otherwise, before the registrar, who will direct whether any and what parties are to be cited. In cases of difficulty the latter will refer the matter to the Court, and his direction is subject to appeal to the Court. (*Brinkley v. A.-G.* (1889), 14 P. D. 83; 58 L. J. P. 53.) Where a petitioner, contrary to the practice thus stated, applied to the Court by motion for leave to cite a person, his application was dismissed with costs. (*Bain v. A.-G.* (1891), 64 L. T. 837.)

The Court refused to order the citation of the elder brother of the petitioner, who was alleged by the petitioner to be illegitimate, as having been born before the date of the marriage of his parents. (*Mansel v. A.-G.* (1878), 4 P. D. 232; 48 L. J. P. 42.) A person not cited, who has no real interest in opposing the petition, will not be allowed to intervene. (*Upton v. A.-G.* (1863), 32 L. J. P. 177.)

A precedent of the pleadings where a party is cited is printed below, p. 559.

Trial.

Where there is an issue raised, the Court will usually, at the request of either party, direct it to be tried by a jury (*In re Bouverie's Petition* (1862), 2 Sw. & Tr. 548; 31 L. J. P. 79; *Ryves v. A.-G.* (1865), L. R. 1 P. & M. 23; 35 L. J. P. 6); but the Court has a discretion in the matter. (*Shedden v. Patrick* (1869), L. R. 1 H. L. Sc. 470.)

In *Ryves v. A.-G.* (1866), 14 W. R. 409, the Attorney-General obtained a postponement, on an affidavit that documents in his possession were likely to lead to further information.

Leave was given on summons, with the consent of the Attorney-General, that the petitioner at the trial might prove the facts by affidavits and certificates, in *Brinkley v. A.-G.* (1890), 15 P. D. 76; 59 L. J. P. 51. As to costs, see below, p. 631.

Appeal.

Appeals to the Court of Appeal and the House of Lords are provided for by sect. 9 of the Supreme Court of Judicature Act, 1881 (44 & 45 Vict. c. 68).

Proceedings under the Greek Marriages Act, 1884.

This Act (47 & 48 Vict. c. 20) deals with certain marriages solemnised between members of the Greek Church between 1836 and 1857, and enables (sect. 1) any party to any such marriage, and any child or grandchild of any such party, and any person interested in the validity of any such marriage to apply to the Probate, Divorce and Admiralty Division for a decree declaring the validity of such marriage. The petition is to be verified by an affidavit in accordance with Matrimonial Causes Rule 2 (Matrimonial Causes Rule 213 (St. R. & O. Rev., Vol. 12, p. 899)). The Act applies sects. 5, 6, 7 of the Legitimacy Declaration Act, 1858 (p. 675), to proceedings under it; but it is to be observed that sect. 4 of that Act is not so applied, and, therefore, the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), does not apply.

In *Scaramanga v. A.-G.* (1889), 14 P. D. 83; 58 L. J. P. 53, the practice as to the citation of parties in legitimacy declaration proceedings was applied to the case of proceedings under this Act. The matter had been previously discussed in the first case under the Act, *Zarafi v. A.-G.* (1885), 1 T. L. R. 683.

CHAPTER VI.

ADMIRALTY.

Droits of the Crown.*General Observations.*

THE history of the droits of the Crown in Admiralty, formerly vested in the Lord High Admiral by virtue of his patent, and of its droits which were not so vested, will be found in an article by Mr. R. G. Marsden in L. Q. R., vol. 15, p. 352, and is concisely stated in Roscoe, Adm. Pr. (ed. 3), pp. 7 *sqq.*; see also *The Dickenson* (1776), Marriott's Decisions, 1; *The Mercurius* (1798), 1 C. Rob. 80, 81; *The Rebeckah* (1799), 1 C. Rob. 227; *R. v. Forty-nine Casks of Brandy* (1836), 3 Hagg. Adm. 257; *Raft of Russian Timber* (1859), 5 Jur. (N. S.) 1109. There is a particularly clear statement in *The Little Joe* (No. 2) (1813), Stewart, 394 (Vice-Admiralty Court of Nova Scotia). It is said that a suit in the Admiralty Court was originally an inquisition of office for ascertaining and securing to the Lord High Admiral such part of his revenue as consisted of droits.

Droits and forfeitures of the Crown in a British possession are to be dealt with under the directions of the Treasury, unless and until the King in Council directs them to form part of the revenues of that possession. (Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 8.)

Wreck, Flotsam, Jetsam, Lagan and Derelict.

The principal droit with which we need now concern ourselves is wreck. Sect. 523 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), declares that the King and his royal successors are entitled to all unclaimed wreck found in any part of his dominions, except in places where he or any of his royal predecessors has granted to any other person the right to that wreck.

"Wreck" includes (sect. 510) "jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water," and also the boats and things specified in Article XXV. of Sched. I. to the Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22); see sect. 10 of that Act.

The provisions embodied in the Merchant Shipping Act, 1894, have simplified the procedure with regard to wreck. A person finding or taking possession of wreck in the United Kingdom, or outside the United Kingdom and bringing it within (Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), s. 72), must, if the owner, inform the receiver of the district of the fact, and, if not the owner, deliver it to the receiver as soon as possible (sect. 518). The receiver, on taking possession, must give notice as thereby provided (sect. 520). He may sell the wreck as therein mentioned (sect. 522). The owner, on establishing his claim within a year to the satisfaction of the receiver, is entitled to have the wreck or the proceeds thereof delivered up to him on payment of salvage, fees and expenses (sect. 521).

As to unclaimed wreck, after declaring the Crown's title as already stated, the Act provides (sect. 524) that a person claiming to be entitled for his own use to unclaimed wreck must deliver to the receiver a statement of the particulars of his title and his address. If the receiver is satisfied with the title, he is to send the claimant a description of the wreck within forty-eight hours.

If no owner establishes his claim to the wreck within a year (sect. 525), the wreck is to be handed over on payment of salvage, fees and expenses to any person referred to in sect. 524, who has established his title to the satisfaction of the receiver (such delivery to discharge the receiver but not to prejudice any claim by third parties (sect. 527)); but if no such person has claimed, the receiver is to sell the wreck and hand over the proceeds, after deducting salvage, fees and expenses, to the Exchequer, the Duchy of Lancaster, or the Duchy of Cornwall, as the case may be.

By sect. 526, disputes between any person claiming to be entitled to unclaimed wreck and the receiver, or between several persons claiming to be so entitled, may be referred and determined as if they were disputes as to salvage to be determined summarily under the Act (see sect. 547). If any party to the dispute is unwilling to have it so referred and determined, or is dissatisfied with the decision, he may, within three months after the expiration of the year or after the date of the decision, as the case may be, take proceedings in any Court having jurisdiction in the matter for establishing his title.

For a common law action of trover for wreck by one alleged grantee against another, see *Alcock v. Cooke* (1829), 5 Bing. 340; 7 L. J. (O. S.) C. P. 126. "Wreck," "flotsam," "jetsam" and "lagan" are defined in *Sir Henry Constable's Case* (1601), 5 Rep. 106 a; see also *The Gas Float Whitton No. 2*, [1896] P. 42; [1897] A. C. 337; 65 L. J. P. 17; 66 L. J. P. 99. "Derelict" is "a term legally applied to a ship which is abandoned and deserted at sea by the master and

crew without any intention on their part of returning to her" (*Cossman v. West* (1887), 13 A. C. 160, 180; 57 L. J. P. C. 17), or to goods on board such a ship (*R. v. Property Derelict* (1825), 1 Hagg. Adm. 383), or floating on the sea (*The Boiler ex Elephant* (1891), 64 L. T. 543). The distinction between what is "*wreccum maris*" and what is "derelict" is pointed out in *R. v. Two Casks of Tallow* (1837), 3 Hagg. Adm. 294; *R. v. Forty-nine Casks of Brandy* (1836), 3 Hagg. Adm. 257; *The Pauline* (1845), 2 W. Rob. 358; and *Stacpoole v. R.* (1875), Ir. R. 9 Eq. 619.

The nature of the intention of returning and the hope of recovery, which is sufficient to prevent a ship or goods from being derelict, is pointed out in *The Sarah Bell* (1845), 4 N. of C. 144, and *The Cosmopolitan* (1848), 6 N. of C. Supp. 17. The mere quitting of the ship for the purpose of procuring assistance from the shore, or with an intention of returning to her again, is not an abandonment (*The Aquila* (1798), 1 C. Rob. 37, 40); but there is an abandonment, if the master and crew leave for the safety of their lives without intending to return, even though they intend to send others to look after the ship. (*The Coromandel* (1857), Swa. 205.)

In *R. v. Property Derelict* (1825), 1 Hagg. Adm. 383, on a decree of condemnation of goods on a derelict ship as droits, a moiety was granted to the salvor.

The effect, as against the Office of Admiralty, of a grant to a lord of a manor of "wreck of the sea," was discussed in *R. v. Forty-nine Casks of Brandy* (1836), 3 Hagg. Adm. 257.

Quære, how far and when the property in derelict vests in the Crown to the exclusion of the owner. It was said in *The Dantzic Packet* (1837), 3 Hagg. Adm. 383, 385, that "the first occupant has a vested interest and a right of exclusive possession, if alone he can save the property; he takes possession indeed for the benefit of the Crown in the first instance, but subject to a liberal remuneration." It was argued in *The Cito* (1881), 7 P. D. 5; 51 L. J. P. 1, that, in the case of an abandonment, the property in the derelict is gone from the owner, and at common law becomes the property of the Crown, or at all events belongs to the Crown when it is brought by the salvors into an English port. Brett, L.J., however, said that he was not prepared to say that abandonment and a subsequent seizure would take the property in the ship out of the owner. But it seems to the author that the proceedings in Admiralty did not purport to make any change in the property, but were declaratory only, and it appears that derelict in the hands of the receiver of wreck must be regarded as the property of the Crown, until someone establishes a better title. See also *A.-G. v. Norstedt* (1816), 3 Price, 97.

Other Droits.

The *Prerogativa Regis*, c. 13 (17 Edw. II. st. 1, c. 11, Ruff.), as amended by the Merchant Shipping Act, 1894, s. 745, and Sched. XXII., gives the King whales and sturgeons taken in the sea or elsewhere within the realm.

Hale, *De Jure Maris*, adds to these porpoise and grampise (great fish or grampus), and there are several instances of porpoise and other great fish being claimed by the Crown, for instance, one called "craspeys" (equivalent, presumably, to *crassus piscis*). In the *Dial. de Scacc.* II. vii. C., we find "piscis regius, rumbus (*i.e.*, rhombus, turbot), vel alius hujusmodi." Plowden (*Case of Mines* (1567), Plowd. 310, 315) says that the most excellent things belong to the most excellent person, to wit, the King, "and so does it likewise in regard to the water, . . . for the things of value, which the sea or water yields, are the fishes therein, and of fishes which are in the sea in England, that is, in the arms of the sea or water within the land, two are more excellent than others, viz. sturgeons and whales. And in respect of their excellency the common law has appropriated them to the King, who is the most excellent person in the realm." He then cites the statute, which, he says, declares the common law, and also Britton, 26 a. The same right is asserted in the *Case del Royall Piscarie de le Banne* (1611), Davys, 55 a, in *Warren v. Mathews* (1703), 6 Mod. 73, and in *Lord Warden of the Cinque Ports v. R.* (1831), 2 Hagg. Adm. 438.

The right is put rather on the ground that such fish were *bona vacantia* or waifs in Bracton, cited in Staundf. Praerog. 37, *Case of Swans* (1592), 7 Rep. 15 b, 16 a; *Barnardiston v. Elwood* (1597), Select Adm. Pleas (Selden Soc.), II. 84; *Sir Henry Constable's Case* (1601), 5 Rep. 106 a, 108 b; *Woodward v. Fox* (1689), 2 Ventr. 187, 188; *Sutton v. Buck* (1810), 2 Taunt. 302, 311. Digges' argument, given in Stuart Moore, *Foreshore*, p. 203, goes further and says that "whatsoever treasure, precious stones or other commodities of any value the seas should yield or cast up upon the shores were and are of dewtie reputed the Prince's." So the anonymous *Treatise on the Dominion of the Sea*, written about 1700, p. 164, refers to "treasures of the sea" such as "amber, coral, fish, shells and other riches which the sea produces."

In the case of a fish, it appears to have been the custom that the finder should take the body, the King the head, and the Queen the tail. The Queen is said to have taken the tail of a whale in order that she might have whalebone for her stays. The early lawyers had not discovered that the whalebone grows at the other end. (See Stuart

Moore, Foreshore, pp. 81—84; Hale ap. Moore, p. 412; 1 Bl. Comm. 223; Fleta, lib. 1, cc. 45, 46.)

It appears from Hale ap. Moore, p. 410, that the King gave half to the finder, and he states this to apply not only to wreck but to "other sea-estrays"; so by the Inquisition of Quenesburgh (1375), Black Book of the Admiralty (Rolls Series), I. 132, 152. Later, one-third seems to have been allowed (L. Q. R., Vol. 15, p. 362).

An inquiry into the matter of a royal fish, and as to whether any damage had been done to it, at the King's command, will be found in Mem. Seacc. H. 24 Edw. I. (ed. Maynard), fo. 37; cf. Y. B. M. 39 Edw. III. fo. 35 a.

Droits of this kind do not come within the provisions as to salvage in the Merchant Shipping Act, 1894. (See *The Gas Float Whitton* No. 2, [1896] P. 42; [1897] A. C. 337; 65 L. J. P. 17; 66 L. J. P. 99.)

Ambergris is a valuable droit, which occasionally comes to hand, and deserves separate mention. It may be regarded as falling within the "treasures of the sea," to which reference was made above, or as part of a royal fish (it is, in fact, a morbid growth in the throat of a sperm whale), and it has several times been taken as a droit by the Crown. Thus, in Select Adm. Pleas (Selden Soc.), II. 82, the Files of Libels, pp. 39, 113, are stated to contain a record of 3 lbs. of ambergris, worth 150*l.*, and in Adm. Court Rec. Misc. Books, 845, the droit book of the High Court from 1618 to 1737, cited in L. Q. R., Vol. 15, p. 359, shows that ambergris and spermaceti were presented as droits. The last case in which ambergris was taken as a droit occurred as recently as 1903.

Droits of the Crown arising from forfeiture and condemnation of ships and goods are dealt with below, p. 517.

Procedure.

Proceedings for the recovery of the Crown's Admiralty droits are taken in the Admiralty Division by the King in his Office of Admiralty, and the King's Proctor appears on his behalf. In the case of wreck, flotsam, jetsam, lagan and derelict within sect. 523 of the Merchant Shipping Act, 1894, to which reference was made above, p. 509, the likelihood of an appeal to the jurisdiction of the Admiralty Court is almost extinguished by the provisions of that Act. The effect of the provisions of the Wreck and Salvage Act, 1846 (9 & 10 Vict. c. 99), now represented by the Merchant Shipping Act, 1894, on the jurisdiction of the Admiralty Court in respect of Admiralty droits was discussed in *Receiver-General of Droits of Admiralty v. Queen's Proctor* (1851), 4 Ir. Jur. 253. But in the case of droits not within the Act of 1894 the old jurisdiction of the Court still remains, and it

can arrest the property or issue a monition to the finder to bring the property into the Registry. Instances of the condemnation of property as droits of Admiralty by the Admiralty Court, on the non-appearance of the owner within a year and a day, at the suit of the King in his Office of Admiralty, will be found in *The Aquila* (1798), 1 C. Rob. 37; *R. v. Property Derelict* (1825), 1 Hagg. Adm. 383; *R. v. Two Casks of Tallow* (1837), 3 Hagg. Adm. 294; *R. v. Forty-nine Casks of Brandy* (1836), 3 Hagg. Adm. 257, all cases of derelict. The right of the Crown was questioned by an alleged grantee in *R. v. Forty-nine Casks of Brandy, ubi sup.*; *The Pauline* (1845), 2 W. Rob. 358; and *Stacpoole v. R.* (1875), Ir. R. 9 Eq. 619. See also *Marquess of Breadalbane v. Smith* (1850), 12 D. 603; *L. A. v. Hebden* (1868), 6 M. 489. In *Lord Warden of the Cinque Ports v. R.* (1831), 2 Hagg. Adm. 438, the Lord Warden took proceedings for condemnation of a whale as a droit to himself, and an appearance was entered by the King, in his Office of Admiralty, who resisted the claim. For another claim by the Lord Warden to droits, see *The Ooster Ems* (1784), 1 C. Rob. 284, n.

In *A.-G. v. Norstedt* (1816), 3 Price, 97, it was held that a judicial sale of a derelict under an interlocutory order, in proceedings to which the Crown was only a party so far as the King's Proctor claimed it as an Admiralty droit, was available against the Crown's right of seizure for a previous forfeiture under the Customs laws.

As to salvage allowances, the procedure is now governed by the Merchant Shipping Act, 1894. It was said in *The Aquila* (1798), 1 C. Rob. 37, that the ancient rule, if it existed, of giving a moiety to the salvor, was obsolete, and two-fifths of the cargo saved was awarded. In *R. v. Property Derelict* (1825), 1 Hagg. Adm. 383, a moiety of the goods was awarded. In *The William Hamilton* (1834), 3 Hagg. Adm. 168, where the property was of very small value, the whole was awarded, on motion, to the salvors. So in *Anon.* (1834), 3 Hagg. Adm. 168, n.

Naval Stores.

As to suits by the Admiralty in respect of naval stores, either in the Admiralty Court or elsewhere, see above, p. 39.

Prize and Booty of War.

Where the subject matter of a petition of right arises out of the exercise of any belligerent right on behalf of the Crown, or would be cognisable in a Prize Court within the dominions, if it were a matter in dispute between private persons, it may be intituled, if the suppliant thinks fit, in Admiralty. (Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 52; see above, p. 347.)

The general procedure in prize causes is governed by the Naval

Prize Act, 1864 (27 & 28 Vict. c. 25), and the Rules made under the Prize Courts Act, 1894 (57 & 58 Vict. c. 39). These provisions extend, by sects. 34, 35 of the Act of 1864, to goods or ships taken in land expeditions, or expeditions in conjunction with an ally. (See also the Army Prize Money Act, 1832 (2 & 3 Will. IV. c. 53), ss. 29—33.) Ships or goods taken as prize by officers or crew of a ship other than a ship of war of the King belong, on condemnation, to the King in his Office of Admiralty (sect. 39). Where the captors have committed an offence against the law of nations or the law of prize, the Court may, on condemnation of the prize, reserve it to the King's disposal, although a grant has been made by the King in favour of the captors (sect. 37).

Decrees by the Court as to the title of the officers and men of a King's ship to prize bounty are provided for by sects. 42, 43.

The decision of questions as to the distribution or investment of prize money is vested in the Admiralty Court by the Naval Agency and Distribution Act, 1864 (27 & 28 Vict. c. 24).

All questions in Scotland relating to prize and capture in war and the condemnation of ships and vessels as such is vested solely in the Admiralty Court in England, by the Court of Session Act, 1825 (6 Geo. IV. c. 120), s. 57. It has jurisdiction throughout the dominions as a Prize Court, and has power to enforce any order or decree of a Vice-Admiralty Prize Court, and any order or decree of the Judicial Committee in a prize appeal (Naval Prize Act, 1864, s. 4). These powers are expressed to apply to the High Court, and all prize matters are assigned to the Probate, Divorce and Admiralty Division, by the Supreme Court of Judicature Act, 1891 (54 & 55 Vict. c. 53), s. 4.

The Court has also jurisdiction to decide all matters concerning booty of war, which the King may refer to it by Order in Council (Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 22). An instance of such a reference was *Banda and Kirwee Booty* (1866), L. R. 1 A. & E. 109; 35 L. J. Adm. 17; and compare *Banda and Kirwee Booty* (1875), L. R. 4 A. & E. 436; 44 L. J. Adm. 41.

Ships or goods captured as prize within the territorial jurisdiction of the King, during any war in which the King is neutral, in violation of the neutrality of the realm, or by a ship violating the provisions of the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), and brought within the dominions by the captor or his agent, or by a person with guilty knowledge, may be restored to the owner by the Admiralty Court on his application. (Foreign Enlistment Act, 1870, s. 14.)

Where a privateer without a letter of marque captured a prize, the property in the prize was held to be in the Crown as a *droit*. (*Nichol v. Goodall* (1804), 10 Ves. 155.)

By Rule 2 of the Prize Rules of 1898 (which will be found in St. R. & O. Rev., Vol. 9, Navy, p. 127), every cause instituted for the condemnation of a ship as prize shall be instituted in the name of the Crown; but the proceedings therein may, with the consent of the Crown (through the proper officer of the Crown), be conducted by the captors or any parties to whom the ship would on condemnation be condemned as prize.

The monition to proceed, where the capture or seizure has been made by any of the King's ships or by officers of the Crown, is to be served upon the proper officer of the Crown. (Rule 44.)

In claims for prize bounty (Rule 90), before the application is made, a monition calling upon the proper officer of the Crown to appear and show cause within the time named therein (not less than four days) why the applicants should not be entitled to prize bounty, shall, on the filing of a *præcipe* by the party claiming, issue out of the Registry.

In questions concerning the distribution or investment of prize money and concerning the remuneration of ship's agents under the Naval Prize Act, 1864, no motion shall be heard unless four days' previous notice has been served upon all parties interested, including (if they are not applicants) the Admiralty.

Pre-emption by the Admiralty of goods before adjudication for the service of the Crown is governed by Rules 93—95.

Property may be released, unless there is a caveat, where it has been arrested at the instance of the Crown, on the filing by the proper officer of the Crown of a consent to, or request for, its release; where it is under arrest in proceedings for condemnation, on the filing by the captors of a consent to restitution, with a declaration endorsed thereon, by the proper officer of the Crown that the Crown proceeds no further; where, the proceedings having been instituted by the Crown, such proceedings are discontinued by the Crown or the property is ordered to be restored by the Court. (Rule 142.) See, generally, *The Elsebe* (1804), 5 C. Rob. 174.

"Proper officer of the Crown" in these Rules means the Law Officer or other agent of the Crown authorised to conduct prize proceedings on behalf of the Crown within the jurisdiction of the Court. (Rule 1.)

Forms to be used in the proceedings by the Crown and others are to be found in Appendix A. to the Rules.

The Rules for Vice-Admiralty Courts (see, now, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27)) are identical with those cited above, and are printed in St. R. & O. Rev., Vol. 9, Navy, p. 275.

As to the appointment of persons to administer oaths for prize proceedings, see the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 4, and the Commissioners for Oaths (Prize Proceedings) Act, 1907 (7 Edw. VII. c. 25).

Forfeiture of Ships and Goods.

Under the Merchant Shipping Act, 1894.

Ships, or shares in ships, become liable to forfeiture to the Crown for the offences specified in sects. 16, 28, 67, 69, 70, 71, of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). By sect. 76, any commissioned officer on full pay in the military or naval service of His Majesty, any officer of Customs in His Majesty's dominions, or any British consular officer, may seize and detain the ship and bring her for adjudication before the High Court in England or Ireland, or before the Court of Session in Scotland, and elsewhere before any Colonial Court of Admiralty or Vice-Admiralty Court in His Majesty's dominions; and the Court may adjudge the ship, with her tackle, apparel and furniture, to be forfeited to His Majesty, and make such order as it deems just, and award the officer such portion of the proceeds of the sale of the ship or share as it thinks fit. The officer is not responsible, either civilly or criminally, for the seizure or detention, notwithstanding that the ship has not been brought in for adjudication, or has been declared not liable to forfeiture, if the Court, before whom any trial relating to the ship, or to the seizure or detention, is held, is satisfied that there were reasonable grounds for the seizure or detention. Otherwise, it may award costs and damages to any party aggrieved, and make such other order as it deems just.

Under the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 103, it was held that the property in the forfeited vessel was divested out of the owners and vested in the Crown immediately on the commission of any of the specified offences, and that therefore the forfeiture overrode any rights of a subsequent *bonâ fide* purchaser without notice. (*The Annandale* (1877), 2 P. D. 218; 47 L. J. P. 3.) But the words used in that Act were "shall be forfeited"; in the Merchant Shipping Act, 1894, they are "shall be subject to forfeiture." Probably that decision, therefore, does not apply to the present Act; see, in particular, the observations of Cotton, L.J., in the case just cited.

The forfeiture can, of course, be claimed by the Crown itself, and not merely by the officers named in sect. 76 of the Merchant Shipping Act, 1894.

For a statement of claim in an action instituted by Her late Majesty's Proctor for that purpose, see *The Sceptre* (1876), 35 L. T. 429.

Under the Piracy Acts.

Pirates' ships and goods captured by King's ships may be proceeded against in Admiralty, and are liable to condemnation as droits

and perquisites of the King in his Office of Admiralty, by sect. 5 of the Piracy Act, 1850 (13 & 14 Vict. c. 26); and ships, with the goods therein, fitted out with the object of trading with pirates, are to be forfeited, half to the King and half to the informer; and the informer is to sue for the same in Admiralty. (Piracy Act, 1721 (8 Geo. I. c. 24), s. 2.)

For proceedings under the Act of 1850, see *The Magellan Pirates* (1853), 1 Ecc. & Adm. 81, and *The Tongva Pirates* (1875), Times News., March 17. *The Telegrafo or Restauracion* (1871), L. R. 3 P. C. 673; 40 L. J. Adm. 18, should also be noted. Cases under the earlier law are cited in Williams & Bruce, Adm. Pr. (ed. 3), pp. 185, 186, to which add *The Helen* (1823), 1 Hagg. Adm. 142; *Prinston v. Admiralty Court* (1616), 3 Bulst. 147; and Co. Litt. 391 a.

Under the Foreign Enlistment Act, 1870.

Ships built, equipped, or despatched contrary to the provisions of the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), and all ships and their equipments, and all arms and munitions of war, used in an expedition fitted out without the licence of the King, shall be forfeited to the King, and proceedings may be taken against them in Admiralty for their forfeiture (Foreign Enlistment Act, 1870, ss. 8, 11, 20); but all proceedings for condemnation or forfeiture require the sanction of the Secretary of State or the chief executive authority, as defined in sect. 26 of the Act (sect. 19). If a ship is restored on proceedings under sect. 23 of the Act (see below, p. 520), all proceedings for condemnation are to be stayed (sect. 23). Instances of proceedings against ships under these provisions are *The Gauntlet* (1872), L. R. 4 P. C. 184; 41 L. J. Adm. 65; and *The International* (1871), L. R. 3 A. & E. 321; 40 L. J. Adm. 1.

Under the Pacific Islanders Protection Acts.

These Acts of 1872 and 1875 (35 & 36 Vict. c. 19, and 38 & 39 Vict. c. 51) contain provisions for the forfeiture of ships by the Admiralty and Vice-Admiralty Courts for offences against those Acts. (See now the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27).)

Under the Slave Trade Acts.

By the Slave Trade Act, 1824 (5 Geo. IV. c. 113), s. 4, ships fitted out, despatched, let on hire, or contracted to be so fitted out, &c., together with all equipments and all goods on board belonging to any of the owners thereof, are forfeited. By sect. 3, all property or pretended property in slaves illegally dealt with, as provided in the Act, is forfeited.

All pecuniary forfeitures and penalties imposed by the above Act may be sued for and recovered in any Court of Record or of Vice-Admiralty (see, now, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27)) in any part of the King's dominions wherein the offence was committed, or where the offender may be, in like manner as any penalty or forfeiture incurred in the United Kingdom under the Customs Acts, or (in the case of the Admiralty Court or of a Court of Vice-Admiralty) in like manner as any vessel seized in pursuance of the Slave Trade Act, 1873 (36 & 37 Vict. c. 88). (Slave Trade Act, 1873, s. 25.)

Sect. 47 of the Act of 1824 fixes a limitation of five years after the offence for the recovery of forfeitures, except in the case of slaves illegally imported, in respect of which there is no limitation of time.

The Slave Trade Act, 1843 (6 & 7 Vict. c. 98), declares these provisions to extend to British subjects, wheresoever residing, and to the offences committed by them, wheresoever committed. (See also *R. v. Zulueta* (1843), 1 C. & K. 215.)

The Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 5, gives the Admiralty Court, and all Vice-Admiralty Courts (see, now, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27)), jurisdiction to try and condemn, or restore any vessel, slave, goods and effects alleged to be seized, detained, or forfeited under that Act, and to give damages on ordering restoration, and to make an order as to costs. By sect. 6, where any vessel or slave seized by an officer of a cruiser of a foreign state is brought in for adjudication in a British Slave Court, all proceedings for the condemnation of the vessel and goods shall be taken in the name of the King by some person duly authorised in that behalf. Sect. 8 provides similar powers for mixed Courts.

By sect. 10, any slaves seized under the Act are, for the purpose only of seizure, prosecution and condemnation, to be deemed to be property, and shall be condemned as forfeited to the use of the Crown for the purpose only of divesting all other right or interest therein, and on condemnation shall be disposed of as the Court adjudges, subject to any regulations made by the Treasury.

By sect. 15, the Treasury, when required by any treaty, shall, and in any other case may, if they think fit, pay all or any costs and damages which have been awarded against the captor, but the captor still remains liable to make good such sum to the Treasury if required to do so.

Sect. 18 makes the pendency of, or judgment in, proceedings for restitution or condemnation of a vessel or goods a complete bar to

every legal proceeding for the recovery of such vessel or goods, or damages or costs in respect of the seizure or detention.

The Admiralty Court is given jurisdiction to hear and determine any question arising with respect to a right to bounties, or any question of joint capture or seizure, and to review and enforce any order of any British Slave Court under the Act (sect. 19). See *In re Bounties for Seizure of Slaves* (1863), 32 L. J. P. 189; *Brig, name unknown* (1864), Br. & L. 370.

The Treasury may appeal from any order of a British Slave Court, which involves payment of money by them, as though they were parties to the proceedings (sect. 21).

For an action against a captor for damages, held to be barred by a ratification of his act by the Government, equivalent to a prior command, see *Buron v. Denman* (1848), 2 Ex. 167, below, p. 639.

The remedy, if any, is against the person who effected the seizure, and not against the Crown by petition of right (*Tobin v. R.* (1864), 16 C. B. (N. S.) 310; 33 L. J. C. P. 199); as in *Casanova v. R.*, *The Ricardo Schmidt* (1866), L. R. 1 P. C. 268; 36 L. J. P. C. 3; and *R. v. Casaca* (1880), 5 A. C. 548; 49 L. J. P. C. 41 (where the seizer was also condemned in costs). As to probable cause for seizure, see also *Xenos v. Aldersley*, *The Evangelismos* (1858), 12 Moo. P. C. 352; *Wilson v. R.* (1866), L. R. 1 P. C. 405.

As to the evidence required for condemnation, see *Hocquard v. R.*, *The Newport* (1857), 11 Moo. P. C. 155.

Detention of Ships.

Under the Foreign Enlistment Act, 1870.

This Act (33 & 34 Vict. c. 90), by sect. 23, provides that the Secretary of State, or the chief executive authority (as defined in sect. 26), may detain a ship where there is reasonable or probable cause to believe that an offence against the Act is intended; that the owner may apply in Admiralty for its release; and that the Court shall as soon as possible put the matter of the detention in course of trial between the applicant and the Crown. The Court may order the ship's release absolutely or on security, and if it be of opinion that there was not reasonable and probable cause for its detention, and if no such cause appear in the course of the proceedings, may declare the owner to be entitled to an indemnity (including his costs of any pending proceedings for condemnation), and may assess the amount, which is to be paid by the Treasury. It may also order an indemnity to be paid on application by the owner in a summary way, where the ship is released before an application has

been made to the Court for such release. Sect. 24 applies these provisions to cases where the ship is detained by a local authority as defined in sect. 21.

By sect. 24, a local authority, if it believes a representation that there is reasonable and probable cause for believing that a ship in the dominions is being equipped or despatched contrary to the Act, must detain it, and communicate the fact to the Secretary of State or the chief executive authority (as defined in sect. 26). The Secretary of State or chief executive authority may thereupon either order the ship to be released, or issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and proceedings then follow as under sect. 23. Where the release of the ship is so ordered, the owner shall be indemnified by the payment of costs and damages on application to the Court of Admiralty in a summary way, as under sect. 23.

It was said in *The Great Northern and The Midland* (1872), 26 L. T. 201, that such an application for indemnity should be by motion upon affidavit, which the Crown was entitled to have time to answer, so as to raise any question of law or fact.

Sect. 27 provides an appeal as in cases within the ordinary jurisdiction of the Court.

No officer or local authority is responsible, either civilly or criminally, in respect of the seizure or detention of a ship under the Act (sect. 28), and the Secretary of State and the chief executive authority are not to be responsible in any action or legal proceedings whatever for any warrant issued by them in pursuance of the Act, and are not to be examinable as witnesses, except at their own request, in any Court of Justice in respect of the circumstances which led to the issue of the warrant. (Sect. 29.)

Under the Pacific Islanders Protection Acts.

The Pacific Islanders Protection Acts, 1872 and 1875 (35 & 36 Vict. c. 19, and 38 & 39 Vict. c. 51), provide that, in the case of vessels seized under those Acts, the various Courts of Admiralty may award damages for the seizure and matters connected therewith. (See especially sect. 4 of the Act of 1875.) No officer or local authority is to be liable civilly or criminally in respect of the seizure or detention of a vessel under the Act. (Sect. 20 of the Act of 1872.) See *Burns v. Nowell* (1880), 5 Q. B. D. 444; 49 L. J. Q. B. 468.

Under the Slave Trade Acts.

The detention of ships and damages therefor under these Acts is dealt with above, p. 519.

Convoy.

A person in command of a ship of a British subject under convoy of any of His Majesty's ships of war, who wilfully disobeys any lawful command of the commander of the convoy, or without leave deserts the convoy, may be proceeded against in the Admiralty Court at the suit of the King in his Office of Admiralty and may be fined a sum not exceeding 500*l.* and be imprisoned for a period not exceeding one year. (Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 46; see also the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 31.)

The last-cited Act, sect. 30, provides that officers of the King's ships, who do not take care of and defend the ships which they are convoying, or demand or exact reward from any merchant or master for convoying the ships entrusted to them, or misuse the masters or mariners thereof, shall make such reparation in damages to the merchants, owners and others as the Court of Admiralty may adjudge, in addition to any criminal punishment inflicted on them.

Ransom.

Contracts or agreements as to the ransom of a ship or goods are under the exclusive jurisdiction of the Admiralty Court, and a person ransoming or agreeing to ransom any ship or goods contrary to any Order in Council made in that behalf, may be proceeded against in the Admiralty Court at the suit of the King in his Office of Admiralty, and be fined a sum not exceeding 500*l.* (Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 45.)

Salvage by King's Ships.

By sect. 557 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), (i.) where salvage services are rendered by any ship belonging to His Majesty, or by the commander or crew thereof, no claim shall be allowed for any loss, damage, or risk caused to the ship or her stores, tackle, or furniture, or for the use of any stores or other articles belonging to His Majesty, supplied in order to effect those services, or for any other expense or loss sustained by His Majesty by reason of that service, and no claim for salvage services by the commander or crew, or part of the crew of any of His Majesty's ships shall be finally adjudicated upon, unless the consent of the Admiralty to the prosecution of that claim is proved.

(ii.) Any document purporting to give the consent of the Admiralty for the purpose of this section, and to be signed by the Secretary to the Admiralty or on his behalf, shall be evidence of that consent.

(iii.) If such a claim is prosecuted and the consent is not proved, the claim shall stand dismissed with costs.

The form of consent of the Admiralty will be found in *Cargo ex Woosung* (1876), 1 P. D. 260, and is as follows: "Merchant Shipping Act, 1854 [now 1894], Admiralty, 22 July, 1874. I hereby certify that the Lords Commissioners of Admiralty consent to the commanding officer of H.M.S. 'Kwangtung,' of the Bombay Marine, prosecuting his claim as he may be advised for salvage in respect of services rendered by such ship under his command to the steamship 'Woosung.'"

Sects. 558 to 563 contain provisions as to salvage by His Majesty's ships out of the limits of the United Kingdom or the four seas adjoining thereto.

The above provisions have been held to apply to a ship belonging to the Bombay Government with a hired commander and crew (*The Dalhousie* (1875), 1 P. D. 271, n.; *Cargo ex Woosung, ubi sup.*), but not to a vessel belonging to Ramsgate Harbour and vested in the Board of Trade under the Harbours and Passing Tolls, &c. Act, 1861 (24 & 25 Vict. c. 47). (*The Cybele* (1878), 3 P. D. 8; 47 L. J. P. 86.) Some doubt, however, has been thrown on this last case by *Young v. SS. Scotia*, [1903] A. C. 501; 72 L. J. P. C. 115.

The owners, masters, and crews of transports under charter to the Admiralty were held to be entitled as salvors in the ordinary way, even though the services were rendered with the assistance of naval officers and seamen, in *The Nile* (1875), L. R. 4 A. & E. 449; 44 L. J. Adm. 38, and *The Bertie* (1886), 6 Asp. M. L. C. 26; 55 L. T. 520. See also *The Lord Nelson* (1809), Edwards, 79.

The intention of the above provisions is that naval officers and men shall not be able to sue for salvage in cases where the services rendered fall within the scope of their ordinary duty as public servants, or are not of real importance.

The basis on which salvage awards are made to them is fully discussed in Kennedy on Civil Salvage (ed. 2), pp. 112—116, and Abbott's Merchant Shipping (ed. 14), pp. 969, 980, 981.

Provisions as to prize salvage, where ships or goods belonging to any of the King's subjects are retaken from the enemy by any of the King's ships, are contained in sects. 40, 41 of the Naval Prize Act, 1864 (27 & 28 Vict. c. 25). If the ship is permitted to proceed on her voyage, and does not return to a port of the United Kingdom within six months, the re-captors may, nevertheless, institute proceedings against the ship or goods in Admiralty.

Salvage on ships and goods taken from pirates is to be paid to the officers and crews of the King's ships which captured them, on their

restoration to their former owners, being His Majesty's subjects, under sect. 5 of the Piracy Act, 1850 (13 & 14 Vict. c. 26).

Claims for Salvage or Damages by Collision against the Crown.

Salvage.

Where a ship is the property of the Crown, no action *in rem* or otherwise for salvage can be maintained. (*Young v. SS. Scotia*, [1903] A. C. 501; 72 L. J. P. C. 115.) This was a very strong case, the Crown vessel being a ferry boat used to connect one part of a railway owned by the Government of Canada with another.

The same principle had already been applied to an unarmed packet belonging to a foreign sovereign, and in the hands of officers commissioned by him, and employed in carrying mails, although also carrying merchandise and passengers for hire. (*The Parlement Belge* (1880), 5 P. D. 197; 48 L. J. P. 18.)

A form of information and protest by the Attorney-General against the arrest of the vessel in this latter case will be found in Williams and Bruce, Adm. Pr. (ed. 3), p. 674.

The principle was applied in the case of foreign ships of war in *The Prins Frederik* (1820), 2 Dods. 451, and *The Constitution* (1879), 4 P. D. 39; 48 L. J. P. 13. In *The Jassy*, [1906] P. 270; 75 L. J. P. 93, on the application of the foreign Government and the production of a certificate from the Foreign Office as to the public character of the vessel in question, proceedings against the vessel were stayed, although, under a misapprehension, agents of the foreign Government had given an undertaking to put in bail and had entered an absolute appearance.

In *The Charkieh* (1873), L. R. 4 A. & E. 59; 42 L. J. Adm. 17, the vessel in question was held, on the facts, not to be entitled to any privilege, since, though the property of a foreign sovereign, it was sent by him to trade here in the ordinary way. It is stated in Williams & Bruce, Adm. Pr. (ed. 3), p. 179, that where salvage services have been rendered to a private ship, the cargo of which consists of Government stores, it would seem that such stores cannot be arrested; though in cases where an action has been brought for services rendered in salving English naval stores, it has been usual for the Crown to enter an appearance in the salvors' action, and to submit to pay such salvage as the Court may direct. That course was followed in *The Marquis of Huntly* (1835), 3 Hagg. Adm. 246.

Where Government stores are being carried in a private ship at the carrier's risk, their value can be taken into account in awarding

salvage, and a salvage action *in personam* will lie against the charterers. (*Five Steel Barges* (1890), 15 P. D. 142; 59 L. J. P. 77; *Cargo ex Port Victor*, [1901] P. 243; 70 L. J. P. 52; and see also *The Winkfield*, [1902] P. 42; 71 L. J. P. 21.)

Damages by Collision.

In *H.M.S. Sans Pareil*, [1900] P. 267; 69 L. J. P. 127, an action of damage by collision was brought against the officer who was navigating the "Sans Pareil" at the time of the collision, as being the actual wrongdoer. The Treasury Solicitor and Crown counsel appeared on his behalf in accordance with the usual practice. Such actual wrongdoer alone can be made liable in the case of a King's ship, and the Admiralty cannot be compelled to appear. (*The Athol* (1842), 1 W. Rob. 374; *The Volcano* (1844), 2 W. Rob. 337; *H.M.S. Swallow* (1856), Swa. 30; *H.M.S. Bellerophon* (1874), 44 L. J. Adm. 5, 7.)

The captain is not liable, if another officer was actually responsible at the moment for the navigation of the ship to blame. (*Nicholson v. Mounsey* (1812), 15 East, 384.) The owners of a ship chartered to the Admiralty as an armed vessel, on board of which were a commander in the Navy and a King's pilot, have, however, been held liable to an action of damage by collision. (*Fletcher v. Braddick* (1806), 2 B. & P. (N. R.) 182.) *Sed quære*. Apparently they would not be liable, if the collision arose from the obedience of the master to the orders of the naval officer who was in charge. (*Hodgkinson v. Fernie* (1857), 2 C. B. (N. S.) 415; 26 L. J. C. P. 217.) On the other hand, in *Stort v. Clements* (1792), 1 Peake, N. P. 144, the pilot of a King's ship was held liable, where the collision happened by his own misconduct, and not through obedience to the orders of the officer in command.

After a collision between one of His Majesty's ships and another ship, it is the duty of the commanding officer of His Majesty's ship to forward a report to the Admiralty, but discovery will not be ordered of such report. (*The Bellerophon* (1874), 44 L. J. Adm. 5; see further below, p. 602.)

If an action is brought in respect of such a collision, notice should be sent to the Admiralty, who will usually instruct the Treasury Solicitor to appear on behalf of the defendant. If the vessel belongs to another Department, notice should be sent to that Department. (Roscoe, Adm. Pr. (ed. 3), p. 302.)

It should be added that, by sect. 741, the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), does not, except where specially provided, apply to ships belonging to His Majesty. Rules identical with the

Collision Regulations have, however, been laid down for His Majesty's ships by Order in Council, and non-observance of these rules by a naval officer must be regarded as negligence. (Maule & Pollock, *Merchant Shipping* (ed. 4), I. 588; and see *H.M.S. Topaze* (1864), 10 L. T. 659; *H.M.S. Supply* (1865), 12 L. T. 799; *The Amazon*, [1867] W. N. 60; 36 L. J. Adm. 4; *The Hochung* (1882), 7 A. C. 512; 51 L. J. P. C. 92.) It does not follow, however, that in the case of a collision between a King's ship and a ship to which the ordinary Collision Regulations apply, the statutory liability imposed on the latter vessel by sect. 419 (4) of the Merchant Shipping Act, 1894, may not be affected. (*H.M.S. Sans Pareil*, [1900] P. 267, at pp. 272, 273; 69 L. J. P. 127.)

The Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), s. 80, now gives the King power by Order in Council to make regulations for the registration of Government ships under the Merchant Shipping Acts, and those Acts will apply, subject to the terms of any Order in Council, to Government ships so registered.

CHAPTER VII.

BANKRUPTCY AND COMPANIES WINDING-UP.

SECT. 150 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), enacts : " Save as herein provided the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown."

The provisions, to which this section refers, appear to be sects. 9, 19, 30, 42, 45, 55 and sect. 40 as amended by the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), ss. 1, 2 ; the Preferential Payments in Bankruptcy Amendment Act, 1897 (60 & 61 Vict. c. 19), ss. 2, 3, and the Workmen's Compensation Act, 1906 (6 Edw. VII. c. 58), s. 5 (3). The words " save as herein provided " were perhaps intended to refer to the Crown debts to which sect. 40 gives priority, but even so they are unnecessary.

The priority of Crown debts in bankruptcy is fully dealt with above, p. 164.

The provisions of sect. 55, relating to the disclaimer of onerous property, were held to be binding upon the Crown, as being " provisions relating to the remedies against the property of the debtor," in *In re Thomas* (1888), 21 Q. B. D. 380 ; 57 L. J. Q. B. 574.

As to the provision that the effect of a composition or scheme of arrangement and the effect of a discharge shall be binding on the Crown, this must be read in conjunction with sect. 30 of the Act, which provides that an order of discharge shall not release the bankrupt from any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable, at the suit of the Crown or of any person, for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for such offence ; and that he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom. Further, by sect. 19, a composition or scheme is not binding on any creditor, so far as regards a debt or liability from which the debtor would not be discharged by an order of discharge, unless the creditor assents to the composition or scheme. " Creditor "

here must, *semble*, be taken to mean the Treasury, in the case of the excepted debts mentioned above.

The Crown is not bound by the provisions of the Companies Acts. As to this, and its effect on the position of Crown debts in a liquidation, see above, p. 167.

It would appear that a Government Department can exercise the rights of a creditor in a bankruptcy or winding-up in cases where it has statutory powers, under which it could have taken legal proceedings against the debtor or the company before bankruptcy or liquidation. In other cases such rights ought to be exercised on behalf of the Department by the Attorney-General. Where the debt is due to the Crown, the Attorney-General, or the King's Proctor, in cases where the Crown is represented by him, should exercise such rights on behalf of the Crown. Thus, in *In re Prentis* (1905), not reported, the Secretary of State for War lodged a proof in bankruptcy for a judgment debt due to him. In *In re Bonham* (1879), 10 Ch. D. 595; 48 L. J. Bk. 84, the Postmaster-General obtained priority for a sum due to him from the bankrupt, by procuring the issue of an extent before the appointment of the trustee in bankruptcy. In *In re West London Commercial Bank* (1888), 38 Ch. D. 365; 57 L. J. Ch. 935, the Postmaster-General moved for an order against the official liquidator for payment of moneys claimed by him, which had been ordered to be carried to a separate account to answer his claim, and in respect of which he had obtained a fiat for a writ of extent; and the Court adjudged him to be entitled to priority. In *In re Thomas* (1888), 21 Q. B. D. 380; 57 L. J. Q. B. 574, the Commissioners of Woods and Forests moved to set aside a notice of disclaimer. In *In re Henley & Co.* (1878), 9 Ch. D. 469; 48 L. J. Ch. 147, the Commissioners of Inland Revenue moved for an order that the official liquidator should pay them property tax in priority to other claims. It appears to the author that this motion ought to have been made by the Attorney-General. A similar observation applies to the similar application which was made in *In re Galvin*, [1897] 1 I. R. 520; [1898] W. N. 140. In *In re Corley* (1889), 23 L. R. Ir. 249, an application was made by the Crown that the assignees in bankruptcy should be ordered to pay, as a preferential debt, a sum due from the bankrupt to the Crown on a bond. A similar application by the Crown was made in respect of a Crown debt in a liquidation in *In re Oriental Bank Corporation* (1884), 28 Ch. D. 643; 54 L. J. Ch. 327. Here it was made not only on behalf of the Treasury, but also on behalf of the Crown in certain colonies and dependencies. In *re Ross* (1855), 4 L. J. Bk. 88, was a petition by the Crown for leave to prove in a bankruptcy. In *In re Higginson and Dean*, [1899] 1 Q. B.

325; 68 L. J. Q. B. 198, the Attorney-General on behalf of the Treasury appealed successfully against an order expunging a proof of a dissolved corporation, the Crown claiming to have become entitled to the assets of the corporation on its dissolution.

Where a question arose whether the creditors or the Crown were entitled to the proceeds of bonds given by a debtor to secure his release from arrest under sect. 25 of the Bankruptcy Act, 1883, notice was given to the Treasury, and they moved the Court for an order that the proceeds should be paid to them. (*In re Gordon*, [1903] 2 K. B. 164.) The Treasury is not concerned with proceedings for the recovery of penal interest chargeable against a trustee under sect. 74 (6) of the Bankruptcy Act, 1883. (*In re Sims*, [1907] 2 K. B. 36; 76 L. J. K. B. 849.)

The Queen's Proctor in one reported case, *E. p. Rayner* (1877), 37 L. T. 38, presented a bankruptcy petition in respect of costs awarded to his predecessor in office.

CHAPTER VIII.

LUNACY.

General Observations.

THE common law jurisdiction of the Crown over lunatics and idiots and their estates, declared in the Prerogativa Regis, cc. 11, 12 (17 Edw. 2, st. 1, cc. 9, 10, Ruff.) (see *A.-G. v. Marquis of Ailesbury* (1887), 12 A. C. 672, 692; 57 L. J. Q. B. 83), has gradually been systematised by statute, and is now governed by the Lunacy Acts, 1890 and 1891 (53 & 54 Vict. c. 5, and 54 & 55 Vict. c. 65), and the Rules made thereunder. The result has been that the direct participation of the Crown in lunacy proceedings, otherwise than through the judicial officers to whom the supervision of its rights has been delegated, no longer prevails for most purposes, and consequently almost all the practice lies outside the scope of this work.

The Crown, however, will attend lunacy proceedings where the case requires (see Lunacy Rule 40), as on the trial of the issue in *In re Gilchrist* (1906), not reported.

It was said in *E. p. Watson* (1821), Jac. 161, that petitions in the matter of an idiot must be served on the Attorney-General; but *quare* whether this is so now, owing to the legal assimilation of idiots to lunatics. (See Pope, Lunacy Pr. (ed. 2), pp. 26, 27.) But where the lunatic has no next of kin, the Attorney-General must have notice of all proceedings subsequent to the return of the inquisition. (*Re Early* (1837), 2 Coop. t. Cott. 107; *In re Kershaw* (1882), 21 Ch. D. 613; and see above, p. 480.) The Attorney-General sufficiently represents the interests of the Crown under such circumstances, even where some of the lunatic's property is in the Duchy of Lancaster, and the lunatic is resident there; and the Court will not give the Attorney-General for the Duchy leave to attend as well. (*In re Kershaw*, *ubi sup.*)

It is said that a commission of lunacy may be directed to issue upon information by the Attorney-General. (Collinson on Lunatics, I. 125.) But a petition for an inquisition, even where there are no next of kin, need not be served upon the Attorney-General, nor need his consent be obtained. (*In re Early* (1837), 1 Jur. 524;

see *E. p. Watson* (1821), Jac. 161.) The Court ordered the Attorney-General to be made a party to a bill to set aside a lease made by the defendant, on the ground that he was a lunatic, in *Leigh v. Wood* (1674), Rep. t. Finch, 135.

Lunatics and idiots may now sue by their next friend (Ord. XVI. r. 17; see also *Light v. Light* (1858), 25 Beav. 248; *Jones v. Lloyd* (1874), L. R. 18 Eq. 265; 43 L. J. Ch. 826); but formerly, where there was no committee of the estate, or where the interest of the committee seemed to be inconsistent with that of the idiot or lunatic, an action was brought by the Attorney-General on behalf of the idiot or lunatic. (*A.-G. v. Panther* (1792), 2 Dick. 748; 3 Bro. C. C. 441, where this procedure was discussed; *A.-G. v. Parkhurst* (1668), 1 Ch. Cas. 112; *A.-G. v. Woolrich* (1669), 1 Ch. Cas. 153; Mitford, Pl. (ed. 5), 29, 30.) It was said in *A.-G. v. Tiler* (1765), 1 Dick. 378; 2 Eden, 230, that in such a case a proper relator, in addition to the lunatic, ought to be appointed to be answerable for the costs. In such a suit the Court has given directions for the care of the property of the lunatic and for proper proceedings to obtain the appointment of a committee. (*A.-G. v. Earl Howe* (1794), cited in Mitford, Pl. (ed. 5), 30.)

The lunatic ought to be made a party, it was said, in order that he might be bound by the proceedings, in case he recovered his senses; but not where the proceedings were intended to avoid some transaction of the lunatic, since in such a case to make him a party would be to make him stultify himself. An idiot, however, need not have been made a party, because he could never recover his senses in law. (*A.-G. v. Parkhurst*; *A.-G. v. Woolrich*; *A.-G. v. Tiler*, *ubi sup.*; *Ridler v. Ridler* (1729), 1 Eq. Ca. Abr. 279, pl. 5.) In *A.-G. v. Tiler*, according to the report in 2 Eden, 230, it was ordered that a relator should be appointed in addition to the lunatic, to be answerable for the costs. It is not very likely that such a proceeding by the Attorney-General would be necessary now, but there seems to be no reason why it should not be utilised in a proper case.

In *In re Graham* (1895), not reported, the Lords Justices requested the Attorney-General to argue a point of law on behalf of a lunatic.

To a bill to perpetuate testimony as to the legitimacy of a lunatic, filed by persons claiming to be next of kin, the Attorney-General was made defendant in *Smith v. A.-G.* (1777), Rom. N. of C. 54, cited 6 Ves. 256. (See above, p. 482.)

As to *scire facias* to enforce bonds in lunacy, see above, pp. 208, 281.

Traverse of Inquisition.

The Petition for Leave to Traverse.

In proceedings on traverse of an inquisition in lunacy, the Crown appears as a party, and the prosecutor of the commission opposes the traverse in the name of the Attorney-General.

The procedure is now governed by the Lunacy Act, 1890, ss. 101—104, and Rules in Lunacy 17, 18, 23, 24. Any person desiring to traverse an inquisition, not being a verdict upon an issue tried in the High Court, may, within three months next after the return of the inquisition, apply for that purpose to the Judge in Lunacy. (Sect. 101 (1).) The application is to be by petition, and every such petition, with the evidence in support thereof, must be filed in the Masters' office, and shall be brought before the judge out of Court without previous consideration by the Masters. (Rules 17, 18, 23.) The judge may make the order, with or without the attendance of counsel, solicitors, or parties, and may adjourn the petition into Court, or refer it to the Masters for inquiry or further inquiry, and may direct any person to be served with notice of the application. (Rules 23, 24.) Notice ought to be given to the Treasury Solicitor for the Attorney-General. A form of petition is given in Elmer, Lunacy Pr. (ed. 2), p. 306.

That the lunatic should have leave to traverse the inquisition as of right was finally held in *In re Cumming* (1852), 1 D. M. & G. 537; 21 L. J. Ch. 753, in which all the earlier authorities were reviewed. But it must be observed on this case that reliance was placed on 2 & 3 Edw. VI. c. 8, s. 6, the whole of which statute was incautiously repealed by the Escheat (Procedure) Act, 1887, s. 3 and Schedule (below, p. 738), and not replaced by any provision in that Act or the Rules made under it. In *In re Gilchrist*, [1907] 1 Ch. 1; 76 L. J. Ch. 63, which applied *In re Cumming*, this point was not considered. But both these cases show that a petition is still necessary, even in the case of an application by the lunatic himself, because the judge has a right to exercise such control over the matter as may be necessary for the protection and estate of the alleged lunatic, as, for instance, by satisfying himself that the application is *bonâ fide*, and that the alleged lunatic is competent to judge of what he is doing, and is really desirous that the traverse shall issue. The judge will therefore require the lunatic's personal appearance before him, in order that he may be able to form an opinion as to these matters. (See also *Sherwood v. Sanderson* (1815), 19 Ves. 280.)

The judge, it seems, may give the lunatic leave to traverse by

attorney. (See *E. p. Roberts* (1743), 3 Atk. 5.) The allowance of a sum of money out of the lunatic's estate for the purposes of the traverse is in the judge's discretion. (*In re Bridge* (1841), Cr. & Ph. 338; 10 L. J. Ch. 404.)

There can be no traverse after the death of the lunatic. (*In re Roberts* (1746), 3 Atk. 308, 312.)

The alienee of the lunatic, whether his interest in the lunatic's estate which has passed to him be legal or equitable, may traverse (*A.-G. v. Parkhurst* (1668), 1 Ch. Cas. 113; *Sherwood v. Sanderson* (1815), 19 Ves. 280; *Niell v. Morley* (1804), 9 Ves. 478); or if he is interested under a contract with the lunatic (*E. p. Hall* (1802), 7 Ves. 261); but whether he may do so as of right is not quite clear. Lord Eldon, L.C., in *E. p. Hall* (1802), 7 Ves. 261, 263, thought that he had the right; Lord St. Leonards, L.C., in *In re Cumming* (1852), 1 D. M. & G. 537, 550; 21 L. J. Ch. 753, left the matter open.

As to the circumstances under which, and the extent to which, the result of a traverse binds the alienee and the heir of a lunatic, see *E. p. Roberts* and *In re Roberts*, *ubi sup.*

The wife of a lunatic was given leave to traverse as of course in *In re Nugent* (1817), 1 Moll. 517; but see *In re Fust* (1787), 1 Cox, 418.

In the case of other persons, the Court will consider whether they have sufficient interest or are otherwise entitled to traverse. (See *E. p. Ward* (1801), 6 Ves. 579.)

It is not the business of the Crown to traverse an inquisition, but it can have a *melius inquirendum*. (See below, p. 534.)

A finding that a man is sane cannot be traversed. (*Hume v. Burton* (1785), 1 Ridg. App. 205, 213.)

The Order giving Leave to Traverse.

In his order the judge must limit a time, not exceeding six months from the date of the order, within which the person desiring to traverse, and all other proper parties, are to proceed to trial of the traverse, and must direct that the person desiring to traverse, not being the person the object of the inquisition, shall, within three weeks next after the date of the order, give sufficient security to, and to the satisfaction of, the Masters for all proper parties proceeding to trial within the time so limited. (Lunacy Act, 1890, s. 101 (2), (3).)

Persons who do not apply for a traverse, or do not give security or proceed to trial within the times limited, shall be absolutely barred of the right of traverse; but the judge may, under special circumstances, extend the time upon such terms as he thinks just (sect. 102). For an order made on failure to proceed with a traverse, see *In re Crosbie* (1860), 5 Ir. Jur. (N. S.) 257.

The Pleadings.

An office copy of the order giving leave to traverse must be filed in the Crown Office Department, as in proceedings on a traverse of escheat, and the traverse must also be filed there, and a copy delivered to the opposite party. (Petty Bag Act, 1849, s. 30, p. 664.)

The replication is in the name of the Attorney-General, and is prepared and filed in the name of the Attorney-General. (See *Thorn v. Coward* (1658), 2 Sid. 124.) It must be submitted to him in the same manner as the statement of claim in proceedings with a relator. (See above, p. 486.)

There is an old form in Trem. P. C. 652, and more modern forms are given in Elmer, Lunacy Pr. (ed. 2), pp. 310. They are similar to the pleadings on a traverse of escheat printed above (p. 454), which may be used to supplement them.

Subsequent Proceedings.

A good account of these will be found in Pope, Lunacy Pr. (ed. 2), pp. 81—83; but, as the Crown is not interested in them, except as a formal party, they do not fall within the scope of the present work. The prosecutor of the commission, appearing in the name of the Attorney-General, will be entitled to exercise the general prerogative of the Crown as a litigant to the extent to which they are enjoyed by a relator bringing an action in the name of the Attorney-General. (See above, pp. 464, 486.)

Melius Inquirendum.

It has been stated that there is no *melius inquirendum* in lunacy. (*E. p. Cranmer* (1806), 12 Ves. 445; *E. p. Atkinson* (1821), Jac. 333.) In *E. p. Roberts* (1743), 3 Atk. 5, 6, it was said, not that there cannot be such a thing, but that “there can be no *melius inquirendum*, for that is only granted on the part of the Crown; but where there is any misbehaviour in the execution of an inquisition, it must be examined into, and if the Court see cause they may quash it and direct a new commission; but a *melius inquirendum* is for the Crown, who cannot traverse as the subject can.” The proper remedy, therefore, appears to be a new commission where the subject applies, as in the cases above cited (see also *In re Holmes* (1827), 4 Russ. 182; *In re Bruges* (1836), 1 My. & Cr. 278); but the Crown can apply for a *melius inquirendum*. (See, further, above, p. 434, as to *melius inquirendum* on inquisitions of escheat.)

CHAPTER IX.

PEERAGE CLAIMS.

THE claimant to a peerage or to a right to vote as a peer presents a petition to the King, through the Home Office, setting forth the details of his claim, pedigree, &c. This is referred to the Attorney-General for examination, before whom the claimant is heard, generally by counsel. Persons who oppose the claim (as in the *Earldom of Norfolk Peerage Claim*, [1907] A. C. 10; 76 L. J. P. C. 9) enter a caveat at the Law Officer's Department, and are also heard before the Attorney-General. He may also give notice to any other person who appears to be interested. He then reports either that the claimant is entitled to the dignity (as in the case of the *Earldom of Cromartie*), or that the claim ought not to be considered, or that it ought to be referred to the House of Lords. In the last case the Crown, if it thinks fit, makes an order of reference to the House of Lords, accompanied by the Attorney-General's report, and the claim is by them referred to the Committee for Privileges for examination. By a Standing Order of March 24, 1767, the Committee does not proceed to hearing till fourteen days after the delivery of printed cases. The Crown does not lodge a case. A claimant may also petition the House for leave to present an additional case, where that course is rendered advisable by the discovery of new material or by other circumstances. Any person may petition the House to be allowed to oppose the claim, and may be given leave to lodge a printed case, and the Committee for Privileges may, if it thinks fit, direct notice to be given by the claimant to any other person. (Compare *The Braye Peerage* (1839), 6 Cl. & F. 757; and *The Camoys Peerage* (1839), 6 Cl. & F. 789.) At the hearing the claimant's counsel states his case, and the opponents, if any, also state their case by their counsel. The Attorney-General always attends on behalf of the Crown, since it is his duty to guard the rights of the Crown and the peerage. The part which the Attorney-General plays, and his attitude towards the claim, depends, of course, on his opinion on the merits of the claim, and as to the completeness of the evidence presented. It may be an attitude of encouragement, of

hostility, or of benevolent neutrality. Indeed, the real position of the Attorney-General in peerage claims is not so much that of a party or an advocate as that of an assistant to the House of Lords, and it is said that, in strictness, he is entitled to sit on a chair inside the bar. (*The Barony of Saye and Sele* (1848), 1 H. L. C. 507, 511, n.)

The resolutions of the Committee for Privileges and of the House of Lords with regard to the claim are merely information and advice to the Crown, which may, if it thinks fit, act upon them.

A discussion of the practice will be found in Cruise on Dignities (ed. 2), 249 *sqq.*; and in Palmer's Peerage Law in England, pp. 231 *sqq.*

CHAPTER X.

SCIRE FACIAS IN THE CROWN OFFICE DEPARTMENT.

THIS form of procedure has lost almost all its importance from the fact that *scire facias* upon recognisance in the Crown Office is abolished by Crown Office Rule 116 of 1906, reproducing Rule 127 of 1886, and that *scire facias* to repeal a patent for an invention was abolished by the Patents, Designs and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), s. 26 (1), and is replaced by the present procedure for the revocation of patents. (See below, pp. 539, 541.) It still exists for the purpose of rescinding Crown grants, charters and franchises. The procedure is governed by the Petty Bag Rules, 1848, rr. 13—19 (printed below, p. 747), so far as they are still applicable, and by the Petty Bag Act, 1849 (12 & 13 Vict. c. 109), sects. 29, 30, 31, 45 (p. 663). As to the substitution of the senior clerk of the Crown Office for the Clerk of the Petty Bag, and as to the common law jurisdiction of the Court of Chancery, see above, p. 433. The above-mentioned sections of the Petty Bag Act, 1849, provide that any writ of *scire facias* for repealing, cancelling, or vacating any letters patent or charter may be directed to the sheriff of any county, although the record on which such writ is founded or issued is in Middlesex or any other county; that declarations and other pleadings shall be delivered to the opposite party and not filed; and that affidavits are to be sworn before the Clerk of the Petty Bag [senior clerk of the Crown Office].

If a subject seeks to avail himself of the procedure by *scire facias*, he must first obtain the fiat of the Attorney-General, as in the case of an information with a relator. (See above, p. 486.)

Where a franchise has been abused by negligence, the Crown may repeal the grant by *scire facias* or *quo warranto*. (*Peter v. Kendal* (1827), 6 B. & C. 703; 5 L. J. (O. S.) K. B. 282.) So where a charter incorporating a trading company has been abused, either by breach of the conditions expressed therein or by matter *dehors* such conditions. (*Eastern Archipelago Co. v. R.* (1853), 2 E. & B. 856; 23 L. J. Q. B. 82.) The pleadings in such a case on the relation of a subject will be found in *R. v. Eastern Archipelago Co.* (1853), 1 E. & B. 310. It was held in *R. v. Hughes* (1866), L. R. 1 P. C. 81; 35 L. J. P. C. 23,

that certain leases granted by the Governor of South Australia were not records, and, though bad on their face, could not be annulled by a *scire facias*. The Board said: "The writ of *scire facias* to repeal or revoke grants or charters of the Crown is a prerogative judicial writ which, according to all the authorities, must be founded upon a record. These Crown grants and charters under the Great Seal are always sealed in the Petty Bag Office, which is on the Common Law side of the Court of Chancery, and become records there [but see above, p. 433]"

All charters or grants of the Crown may be repealed or revoked when they are contrary to law, or uncertain, or injurious to the rights and interests of third persons, and the appropriate process for the purpose is by writ of *scire facias*. If the grant or charter is to the prejudice of any person, he is entitled as of right to the protection of this prerogative remedy. For, as was said by Jervis, C.J., in the case of *Eastern Archipelago Co. v. R.*, *ubi sup.*, "to every Crown grant there is annexed by the common law an implied condition that it may be repealed by *scire facias* by the Crown, or by a subject grieved using the prerogative of the Crown upon the fiat of the Attorney-General." See, further, the authorities cited in argument in this case.

The form of judgment annulling Crown grants, &c. adds that they shall be restored into the Court of Chancery, there to be cancelled. (See *Bynner v. R.* (1846), 9 Q. B. 523, 550; 15 L. J. Q. B. 414.) This form was followed in *Eastern Archipelago Co. v. R.*, *ubi sup.*, and the Lord Chancellor made an order that the company should bring up their letters patent to be cancelled. On their not appearing, an order *nisi* for cancellation was made. The case was then again brought on; the Clerk of the Petty Bag attended with the original charter, and the defendants, by their counsel, appearing and consenting, the seal was cut off and the enrolment vacated. (*R. v. Eastern Archipelago Co.* (1854), 4 D. M. & G. 199.)

For an information in Chancery to avoid a patent obtained by fraud, see *A.-G. v. Vernon* (1685), 1 Vern. 277, 370, above, p. 471.

CHAPTER XI.

LETTERS PATENT FOR INVENTIONS.

Proceedings to settle Remuneration for User by the Crown.

By sect. 29 of the Patents and Designs Act, 1907 (7 Edw. VII. c. 29), a patent shall have to all intents the like effect as against the Crown as it has against a subject, but any Government Department may, by themselves, their agents, contractors or others, at any time after the application, use the invention for the services of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Treasury, between the Department and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

The proceedings for settling such compensation, of which there have been several recent instances, are held at the Treasury, before the Chancellor of the Exchequer and two Lords of the Treasury or Treasury officials. The patentee presents a claim setting forth the nature of his invention and the details of his patent, the extent of the user, if any, by the Government Department in question, and the amount which he claims in respect of past and future user. The Department in question puts in an answer dealing with the allegations in the claim, and stating the remuneration, if any, to which it considers the claimant to be entitled. The parties are heard by their counsel and witnesses. The tribunal is not given any power to decide as to the validity of the patent, but it seems clear that it must consider the amount of originality of the invention and other elements in its value, in order that it may determine the proper amount of remuneration to which the claimant is entitled. The extent of its jurisdiction has been the subject of considerable discussion, but it is submitted that the above view is the correct one.

Revocation of Patents.

In lieu of the old proceeding by *scire facias* (see above, p. 537), sect. 25 of the Patents and Designs Act, 1907, provides for a petition to the Court for the revocation of a patent. Such petition may be presented by the Attorney-General in England, or any person

authorised by him. In Scotland, it is provided by sect. 94 that the proceedings shall be in the form of an action of reduction at the instance of the Lord Advocate, or of a party having interest with his concurrence, or by the classes of persons enumerated in sub-sect. 3 (b) of sect. 25. If there is any doubt whether the petitioner falls within the three privileged classes, or if he clearly does not do so, he must apply for the Attorney-General's fiat. The procedure to obtain the fiat is fully set out in Frost, Patent Law and Practice (ed. 3), I. 295, 296, and the decisions as to the exercise of the Attorney-General's discretion are there discussed. Add to these *North Eastern Marine Engineering Co. v. Leeds Forge Co.*, [1906] 2 Ch. 498; 75 L. J. Ch. 720, where it was held that the mere fact that a patent had expired was not of itself a sufficient reason for refusing the fiat.

No proceeding for revocation of a patent lies where it has been assigned to the Secretary of State for War or to the Admiralty under sect. 30 of the Act of 1907. (See sect. 30 (9).) The decision of the judge is final. (Sect. 92.)

Extension of Patents.

Proceedings for this purpose were formerly had before the Judicial Committee of the Privy Council, and were governed by sect. 25 of the Patents, Designs and Trade Marks Act, 1883, and the Privy Council Rules of 1897 made thereunder. (St. R. & O. Rev., Vol. 9, Patents, Designs and Trade Marks, p. 134.) The petitioner (Rule 3) had to furnish three copies of the balance-sheet relating to the patent for the use of the Treasury Solicitor, and, upon two days' notice, to give the Treasury Solicitor or any person deputed by him reasonable facilities for inspecting and taking extracts from the books on which such balance-sheet is based. In practice a very stringent examination was made by a deputy of the Treasury Solicitor, and any omission or incorrectness in a petitioner's balance-sheet stood little chance of escaping his attention. By Rule 8, the Judicial Committee would hear the Attorney-General, or other counsel on behalf of the Crown, on the question of granting the prayer of the petitioner. The Attorney-General was not required to give notice of the grounds of any objection he might think fit to take, or of any evidence which he might think fit to place before the Committee. This last rule embodied the practice which prevailed with respect to the attendance and position of the Attorney-General. In practice he, or other counsel on behalf of the Crown, always attended, whether opponents of the petition were present or not, and this was the practice for many years. (See *In re Erard's Patent* (1835), 1 Webster, P. C. 557.) The claimant was asking for a favour, and a favour which was

very rarely granted (the author only recollects two successful applications in seven years), though claimants too often seemed to forget this; and it was the Attorney-General's duty to see that the favour was not granted, unless such merit and insufficient remuneration were shown as justified the grant. Sect. 25 of the Act of 1883 is now replaced by sect. 18 of the Patents and Designs Act, 1907, whereby petitions for extension of patents are to be presented to the Court (as to which, see sect. 92); and the Comptroller is to be entitled to appear and be heard, and is to appear if so directed by the Court. The decision of the judge is final. (Sect. 92.)

Proceedings before the Law Officer and the Comptroller.

It is not within the scope of this work to deal with those proceedings in which the Crown official takes part in a judicial capacity, and which are now governed by the Patents and Designs Act, 1907. The former proceedings consist of appeals from the Comptroller as to refusal of application for patent (sects. 3, 7), refusal to accept complete specification (sect. 6), decision on opposition to grant of patent (sect. 11), amendment of specification (sect. 21). The procedure is governed by sect. 40, under which Rules have been made, dated 11th December, 1907. Sect. 39 gives both the Comptroller and the Law Officer power to require security for costs. As to the Comptroller's costs in appeals from his decision to the Law Officer, see above, p. 102.

Appeals to the Court from the Comptroller.

These concern the restoration of lapsed patents (Patents and Designs Act, 1907, s. 20), the revocation of patents on grounds on which its grant might have been opposed (sect. 26), and the revocation of patents worked outside the United Kingdom (sect. 27). In the last case it is provided that the Law Officer, or such other counsel as he may appoint, shall be entitled to appear and be heard. On application for rectification of the register (sect. 72) the Comptroller may, and may be ordered by the Court to, appear. As to the Comptroller's costs, see above, p. 102. By s. 92, the decision of the judge is final, except in cases under sect. 26.

Petitions for Compulsory Licences or Revocation.

On the hearing of these, which are governed by sect. 24 of the Patents and Designs Act, 1907, the Patents Rules, 1908, r. 74, the Law Officer, or such other counsel as he may appoint, may appear and be heard. The decision of the judge is final (s. 92).

CHAPTER XII.

PROCEEDINGS UNDER THE VEXATIOUS ACTIONS ACT, 1896.

THIS Act (59 & 60 Vict. c. 51), s. 1, provides as follows: "It shall be lawful for the Attorney-General to apply to the High Court for an order under the Act, and if he satisfies the High Court that any person has habitually and persistently instituted vexatious legal proceedings without any reasonable ground for instituting such proceedings, whether in the High Court or any inferior Court, and whether against the same person or against different persons, the Court may, after hearing such person or giving him an opportunity of being heard, after assigning counsel in case such person is unable on account of poverty to retain counsel, order that no legal proceedings shall be instituted by that person in the High Court or any other Court, unless he obtains the leave of the High Court or some judge thereof, and satisfies the Court or judge that such legal proceeding is not an abuse of the process of the Court, and that there is *prima facie* ground for such proceeding. A copy of such order shall be published in the *London Gazette*."

This Act only applies to England. Similar provisions for Scotland are contained in the Vexatious Actions (Scotland) Act, 1898 (61 & 62 Vict. c. 35). The care, with which this restraint on the rights of the subject is to be exercised, is shown by the terms of the section. Applications under it have hitherto been made to a Divisional Court by the Attorney-General in person, as in *Re Chaffers* (1897), 76 L. T. 351, and in *In re Jones* (1902), 18 T. L. R. 476, where the circumstances under which the Act should be applied were discussed. A form of notice of motion is printed below, p. 560.

APPENDIX OF PRECEDENTS.

PART I.

Chancery.

Certificate of Counsel in a Relator Action.

Endorsed on proposed Statement of Claim.

I certify that this writ and statement of claim are proper for the allowance of His Majesty's Attorney-General [and that without such allowance complete relief cannot be obtained by the relator[s]].

Dated . (Signed) .

Endorsed on amended Statement of Claim.

I certify that the proposed amendments shown within in red are proper for the allowance of His Majesty's Attorney-General.

Dated . (Signed) .

Certificate of Solicitor as to Relator's Fitness.

I hereby certify that A. B. of is a proper person to be relator in the action proposed in the name of His Majesty's Attorney-General at the instance of the said A. B. against C. D., the proposed writ and statement of claim in which action are herewith submitted to His Majesty's Attorney-General, and that the said A. B. is competent to answer the costs of the said proposed action.

Dated . (Signed) E. F.
of ,
Solicitor to the said A. B.

Authority of Relator.

IN THE HIGH COURT OF JUSTICE,
Division.

19 . No. .

[Mr. Justice .]

Between HIS MAJESTY'S ATTORNEY-GENERAL (on the relation of
A. B.)

[and A. B.] - - - - Plaintiff[s],
and
C. D. - - - - Defendant.

I, the above-named A. B., of , authorise you to use my name as relator in the proposed action between the above-named parties, wherein the plaintiff[s] intend[s] to claim [*state the claim briefly*].

(Signed) A. B.

To Mr. C. D., of ,
My Solicitor.

[*Where the relator takes the place of a deceased relator, substitute—"as relator in the action between the above-named parties in place of the above-named E. F., now deceased."*]

Pleadings in an Action by the Attorney-General (in the nature of an Information of Devenerunt) for the Recovery of Treasure Trove.

Between HIS MAJESTY'S ATTORNEY-GENERAL (on behalf of His
Majesty the King) - - - - Plaintiff,
and
THE TRUSTEES OF THE BRITISH MUSEUM - - - - Defendants.

Indorsement of Writ.

The Plaintiff claims delivery up of certain ancient golden Celtic ornaments more particularly described in the Schedule hereto some time since found near Limavady in the County of Derry Ireland and now in possession of the Defendants the Trustees of the British Museum belonging to His Majesty the King by virtue of His Prerogative Royal and in right of His Royal Crown or in the alternative damages for wrongfully depriving His Majesty of the aforesaid chattels and converting the same and if necessary the appointment of a receiver and an injunction. Costs.

Statement of Claim.

1. [*Describes the discovery and nature of the ornaments.*]
2. The owner of the said ornaments at the time of their being concealed in the earth is altogether unknown and in the circumstances the same were and are Treasure Trove and belong to His Majesty the King by virtue of His Prerogative Royal and in right of His Royal Crown.
3. The said ornaments were delivered by the finders thereof to A. B. their employer through whom after intermediate transfers they ultimately came by purchase into the possession of the Defendants the Trustees of the British Museum.

4. The Defendants the Trustees of the British Museum have refused to deliver the said ornaments to His Majesty and despite His Majesty's title thereto still retain the said ornaments in their possession.

The Plaintiff claims—

1. Delivery up of the said ornaments being Treasure Trove belonging to His Majesty the King by virtue of His Prerogative Royal and in right of His Royal Crown.
2. Alternatively damages for wrongfully depriving His Majesty of the aforesaid ornaments and converting the same.

Defence.

1. The Defendants admit that the ornaments mentioned in paragraph 1 of the Statement of Claim were found at a little distance below the surface of the earth, but the Defendants do not admit that they were originally or ever intentionally concealed or that they were or are treasure trove.

2. Even if the said ornaments were treasure trove when found the Defendants submit that under circumstances hereinafter mentioned they do not belong to His Majesty the King by virtue of His Prerogative Royal or otherwise.

3—8. [*Set out certain charters in support of paragraph 2.*]

9. The Defendants purchased the said ornaments openly and in good faith on behalf of the British Museum. . . . The Defendants are bound by statute to preserve for public use to all posterity the articles in their collection with certain exceptions not affecting the said ornaments.

Petition under the National Debt Act, 1870.

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

In the Matter of the National Debt Act, 1870,
and

In the Matter of the Estate of A. B., deceased.

Between C. D. and E. F.

To His Majesty's High Court of Justice.

The humble Petition of E. F., the above-named Defendant.

Sheweth as follows :—

[*Set out facts.*]

The Petitioner prays that upon payment by the Petitioner to His Majesty's Attorney-General and the Commissioners for the Reduction of the National Debt of their costs of this application and relating thereto to be taxed in case the parties differ the sum of £ standing in the books of the Governor and Company of the Bank of England to the account of the Commissioners of the National Debt but which was lately standing in the names of with all dividends accrued thereon subsequently to may be transferred and paid by the said Commissioners to the Petitioner, he undertaking to pay the costs (to be taxed in case the parties differ) of the respondent C. D. whether as plaintiff in this action or as respondent to this application.

Or that such other order be made in the premises as the circumstances require.

It is intended to serve this Petition upon—

His Majesty's Attorney-General,
The Commissioners for the Reduction of the National Debt, and
The Plaintiff C. D.

PART II.

Probate and Administration.

Warrant under the Treasury Solicitor Act, 1876, s. 2, to the Treasury Solicitor to administer, in certain cases, to the Personal Estate of Intestate Bastards and others dying without known Kin.

EDWARD R.

Edward the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith To all to whom these presents shall come Greeting Whereas by virtue of Our Royal Prerogative We are entitled to the personal estate of all persons dying intestate being bastards without husband wife or issue or otherwise without husband or wife child parent brother sister uncle aunt nephew niece cousin german or any known relation And whereas by section 2 of "The Treasury Solicitor Act 1876" it was enacted (among other things) that where by reason of Her late Majesty Queen Victoria having become entitled in right of Her Crown to the personal estate of an intestate or otherwise any Court had power to grant administration of the personal estate of any deceased person to a Nominee of Her Majesty and Her Majesty by warrant under Her Royal Sign Manual was pleased to nominate for that purpose the Solicitor for the affairs of Her Treasury for the time being the Court might grant such administration for the use of Her Majesty to the Solicitor for the affairs of Her Treasury (by his official name) and his successors or if the warrant so provided to some person nominated in that behalf by the Solicitor for the affairs of Her Treasury And whereas by section 2 of the said Act it was further enacted that a Royal Warrant might nominate the Solicitor for the affairs of Her said late Majesty's Treasury for the purposes of that section either in any particular case or class of cases or in all cases and might limit such nomination to be during Her Majesty's pleasure or during any limited period or otherwise as to Her Majesty might seem fit And whereas by section 30 of the Interpretation Act 1889 it was enacted that in that Act and in every other Act whether passed before or after the commencement of that Act references to the Sovereign reigning at the time of the passing of the Act or to the Crown should unless the contrary intention appeared be construed as references to the Sovereign for the time being And whereas We deem it expedient that We should by Royal Warrant nominate the Solicitor for the affairs of Our Treasury for the time being in all cases for the purposes of the said recited section of "The Treasury Solicitor Act 1876" Our will and pleasure is and We do hereby during Our Royal Pleasure charge and command you Our Procurator-General and your successors in the said office whenever you or they shall judge it expedient so to do to appear on Our behalf before Our High Court

of Justice (Probate Divorce and Admiralty Division) or some other competent Court and from time to time assert Our right in and to the personal estate of any person dying as aforesaid And Our will and pleasure further is in accordance with the provisions of "The Treasury Solicitor Act 1876" you as Solicitor for the time being for the affairs of Our Treasury and your successors in that office do whenever you or they should judge it expedient so to do upon the decease of any person dying as aforesaid apply for and obtain letters of administration for Our use of the estate of such deceased person And you Our said Procurator-General and Solicitor for the time being for the affairs of Our Treasury and your successors as aforesaid are hereby required to take care that in every proper case there be as soon as possible exhibited to the President of the Probate Divorce and Admiralty Division of Our said High Court or some other competent judge an inventory of the personal estate of the deceased.

And for so doing this shall be your warrant.

Given at Our Court at Marlborough House this 8th day of March in the 1st year of Our reign.

By His Majesty's commands.

H. T. ANSTRUTHER.

W. H. FISHER.

To Our right trusty and right well-beloved Cousin
Hamilton Earl of Desart K.C.B. Our Procurator-
General and Solicitor for the time being for the
affairs of Our Treasury.

Pleadings on Claim for Grant of Administration by the Treasury Solicitor.

Writ.

The plaintiff's claim is to have granted to him (for the use of His Majesty and as the nominee of His Majesty under His Royal Sign Manual) administration of the personal estate and effects of one A. B. in the County of _____ who died on the _____ day of _____ Intestate and without widow or next of kin to which estate and effects His Majesty has become entitled in right of His Crown.

This Writ is issued against you because you have alleged yourself to be the sole legatee under an alleged Will of the said A. B. and because you have applied for a grant of Letters of Administration with the said alleged Will annexed of the personal estate and effects of the said A. B.

Statement of Claim.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Probate.)

Writ issued the _____ day of _____

Between THE SOLICITOR for the AFFAIRS of HIS MAJESTY'S

TREASURY - - - - - Plaintiff,
and

C. D. - - - - - Defendant.

1. A. B. deceased late of _____ in the County of _____ Gentleman died on the _____ day of _____ aforesaid without widow and intestate.

2. The said A. B. left no child or other kin whatsoever him surviving.
3. The said A. B. died leaving personalty within the jurisdiction of this Court and the same is still within such jurisdiction.
4. His Majesty is entitled in right of His Royal Prerogative and in right of His Royal Crown to the personal estate and effects of the said Intestate.
5. The Plaintiff by Warrant under His Majesty's Royal Sign Manual dated March 8th 1901 has been nominated as the grantee of administration to the personal estate and effects of the said deceased for the use of His Majesty pursuant to the Treasury Solicitor Act 1876.
6. The Plaintiff denies the Defendant's interest.

The Plaintiff claims :—

That the Court decree to him as His Majesty's nominee a Grant of Letters of Administration of the personal estate and effects of the said deceased for the use of His Majesty.

Defence and Counterclaim.

1. The Defendant denies that the deceased died intestate.
2. The Defendant denies the allegations contained in paragraphs 4 and 5 of the Statement of Claim.

And by way of Counterclaim—

3. The Defendant is the universal Legatee and devisee named in the true last Will of the deceased A. B. dated but which was in fact duly executed by the deceased on .

4. The said Will contains no appointment of Executors.

The Defendant claims—

1. Sentence pronouncing for the true force and validity of the said Will.
2. Letters of administration to himself as universal legatee with the said Will annexed.

Reply and Defence to Counterclaim.

The Plaintiff as to the Defence says that—

1. He joins issue thereon.

The Plaintiff as to the Counterclaim says that—

2. The said A. B. died intestate.
3. The alleged Will was not executed according to the provisions of the Wills Act, 1837, or at all.

4. The deceased at the time the alleged Will purports to have been executed was not of sound mind memory and understanding The deceased did not in fact execute the said Will.

5. If the said Will was executed by the deceased (which is denied) the deceased did not at the time of the execution of the said Will know and approve of the contents thereof nor did he know that he was executing the same.

Reply to Defence to Counterclaim.

The Defendant denies every allegation contained in paragraphs 2, 3, 4 and 5 of the Defence to Counterclaim.

Claim by Treasury Solicitor for Grant of Administration and Revocation of former Grant.

Writ.

The Plaintiff claims to be entitled to have granted to him (for the use of His Majesty and as the nominee of His Majesty under His Royal Sign Manual) administration of the personal estate of C. D. late of in the County of deceased who died on the day of 19 a bastard and intestate and without leaving a widow or lawful issue.

The Plaintiff claims that the grant of letters of administration of the personal and other estate of the said deceased made to you on the day of March 19 may be revoked and letters of administration of the personal estate of the said deceased granted to the Plaintiff for the use of His Majesty.

Pleadings in Probate Action where the Treasury Solicitor is Sole Defendant.

Writ.

[*After the claim*] This writ is issued against you because the said A. B. was a bastard and died a bachelor and his estate and effects would devolve on the Crown if and so far as he should be pronounced to have died intestate.

Or

This Writ is issued against you as being interested in the event of there being an intestacy.

Or

This Writ is issued against you by reason of the deceased having died a bastard and of there being no known next of kin of the deceased.

Or

This Writ is issued against you the Solicitor for the affairs of His Majesty's Treasury, because you are believed to be interested in the estate of the deceased in case she died intestate.

Statement of Claim and Defence.

1—8. [*In ordinary form.*]

Counterclaim.

9. The said A. B. deceased late of in the County of died on the day of at aforesaid a bachelor and intestate.
10. The said A. B. left no child or other kin whatsoever him surviving.
11. The said A. B. died leaving personalty within the jurisdiction of this Court and the same is still within the jurisdiction.
12. His Majesty is entitled in right of His Royal Prerogative and in right of His Royal Crown to the personal estate and effects of the said A. B.
13. The Defendant by warrant under His Majesty's Royal Sign Manual dated March 8th 1901 has been nominated as the grantee of administration to the personal estate and effects of the said deceased for the use of His Majesty pursuant to the Treasury Solicitor Act 1876.

14. The Defendant denies the Plaintiff's interest.

The Defendant counterclaims—

That the Court decree to him as His Majesty's nominee a grant of Letters of Administration of the personal estate and effects of the said deceased for the use of His Majesty.

Reply to Counterclaim.

The Plaintiff as to the Counterclaim says that :—

1. The said A. B. did not die intestate.
2. The Plaintiff denies that His Majesty is entitled in right of His Royal Prerogative and in right of His Crown or otherwise to the personal estate and effects of the said A. B. or any part thereof.
3. The Plaintiff has no knowledge of and does not admit the facts alleged in the 13th paragraph of the Defence and Counterclaim.
4. The Plaintiff is interested in manner set forth in the Statement of Claim and he here repeats the several allegations and documents therein stated or set out.

Pleadings in Probate Action where the Treasury Solicitor is a Co-Defendant.

Writ.

The Plaintiff claims to be an executor of the last Will dated the day of of A. B. late of in the County of deceased who died on the day of and to have the said Will established.

This Writ is issued against you C. D. because you have entered a caveat and have alleged that you are the executor of a later Will of the said deceased dated and against you the Solicitor for the affairs of His Majesty's Treasury as claiming to be entitled to a grant of administration in the event of the deceased having died intestate without any known relatives.

Statement of Claim of the Defendant C. D.

Delivered pursuant to the Order of Mr. Registrar dated the day of .

The Defendant C. D. says :—

1. That he is one of the executors named in the true last Will and Testament of A. B. deceased late of in the County of who died on the day of the said Will bearing date the day of .
2. That the said Will never was revoked or destroyed by the deceased or by any person in his presence or by his direction and the same was a valid and subsisting Will at the time of his death but it has been lost or mislaid and cannot now be found.
3. That the contents of the said Will are contained in the draft thereof which is referred to in this Defendant's Affidavit of Scripts and has been lodged in the Probate Registry under the subpœna of the Court by E. F.

The Defendant claims :—

1. Probate of the said Will in solemn form of law as contained in the said draft thereof.
2. Such further and other relief as may be just.

Defence of the Plaintiff.

The Plaintiff, subject to an Order of Mr. Registrar made herein the day of , says that:—

1. The said alleged Will of was not duly executed in accordance with the provisions of the statute 1 Vict. c. 26.
2. He denies that the contents of the said alleged Will are contained in the draft as alleged.

The Plaintiff claims:—

1. That the Court shall pronounce against the said Will propounded by the Defendant C. D.
2. Such further and other relief in the premises as to this Honourable Court may seem just.

Take notice that the Plaintiff merely insists upon the said alleged Will of being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the said Will.

Defence of the Treasury Solicitor.

Delivered (pursuant to Order dated).

The said Defendant says that:—

1. He admits paragraphs 1 and 3 of the Statement of Claim delivered herein by the Defendant C. D. but he does not admit paragraph 2 thereof.
2. The said Will bearing date the was destroyed by the testator A. B. with the intention of revoking the same and thereby the said Will was revoked.
3. The said A. B. never made any Will subsequent to the day of and died intestate.

The said Defendant claims:—

1. That the Court shall pronounce against the Will propounded by the Plaintiff.
2. That the Court shall declare that the Will bearing date was revoked by the testator.
3. That the Court shall declare that the said A. B. died intestate.
4. Such further or other relief in the premises as to the Court may seem just.

Reply of the Defendant C. D. to the Defence of the Treasury Solicitor.

Delivered by of (pursuant to Order dated).

The said Defendant C. D. says:—

1. That he denies the allegations contained in paragraph 2 of the said Defence and joins issue thereon.
 2. That he denies that the deceased A. B. died intestate as alleged in paragraph 3 of the said Defence.
-

Pleadings in Probate Action where the Attorney-General is Defendant.*Writ.*

The Plaintiffs claim revocation of the probate granted on the day of of the Will of A. B. late of in the City of deceased who died on the day of the said Will bearing date the day of and a fresh grant of probate in solemn form of law of the said Will omitting therefrom all that portion of Clause 12 thereof commencing with the words "and to stand possessed" &c. down to the end of the said 12th clause.

This Writ is issued against you as the person authorised by law to provide a scheme for the charitable distribution of estates of deceased testators.

Another Form.

This Writ is issued against you, His Majesty's Attorney-General, because you are interested under the undated document purporting to be a will of the said deceased, whereby she bequeathed the residue of her estate to general charitable purposes.

Statement of Claim.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Probate.)

Writ issued the

day of

Between C. D. and E. F. - - - - - Plaintiffs,
and

HIS MAJESTY'S ATTORNEY-GENERAL - - - - - Defendant.

1. The Plaintiffs, C. D. and E. F., are the executors appointed under the will of A. B., late of , in the City and County of , deceased, who died on the day of , the said will bearing date the day of .

2. Probate of the said will of the said deceased was granted by the District Registrar of , on the day of , to the Plaintiffs as the executors therein named.

3. By the 12th clause of the said will, the testator bequeathed or purported to bequeath absolutely to the Plaintiffs, the trustees therein named, all his real and personal estate to which at his death he should be beneficially entitled or of which he should have power to dispose beneficially by will for any purpose he might think proper and which he had not otherwise by his said will disposed of, upon trust, with certain directions to sell, call in, and convert into money, and out of the proceeds to arise from such sale and conversion, and out of the testator's ready money to pay his funeral and testamentary expenses and debts and the legacies bequeathed by his said will and the duty thereon, but so that all legacies should be paid primarily out of his personal estate.

4. The concluding portion of the said 12th clause of the said will, as executed by the said testator, was as follows:—

"And to stand possessed of the residue of the said money upon trust to divide the same between and amongst the respective charitable societies and institutions mentioned in the fourth clause of this my

will so that the sum paid to each society or institution may bear the same ratio to the total amount of my residuary estate as the legacy by the said fourth clause bequeathed to the same society or institution bears to the total amount of the legacies bequeathed by the said fourth clause”;

but the fourth clause of the said will contains no legacy or bequest to any society or institution whatsoever, neither is any society or institution therein mentioned.

5. The said testator did not know and approve of the residuary bequest contained in his said will, inasmuch as he signed the said will in a great hurry and without reading over the same, and the said will was not in accordance with his instructions and was not, in fact, read over by or to him before he executed it, and neither the residuary bequest, as contained in the last part of the said twelfth clause, nor the purport thereof, was ever called to the attention or knowledge of the testator before or at the time when he executed the said will, and the same did not contain his wishes or intentions and was not in accordance with his instructions; and the testator, upon becoming aware of the terms of the said residuary bequest, as contained in the last part of the said twelfth clause of the said will, by reading over the same shortly after its execution, at once expressed disapproval of the said residuary bequest, and signified his disapproval in writing upon the said will, as now appears on the face thereof.

The Plaintiffs claim :—

1. Revocation of the probate granted in common form on the day of , of the last will of the said deceased.
2. Probate in solemn form of law of the said last will, but omitting therefrom the last part of the twelfth clause thereof.
3. A declaration that the said deceased died intestate as to the residue of his estate.
4. Such further and other relief as may be just.

Defence.

1. His Majesty's Attorney-General, on behalf of His Majesty, gives the Court to understand that he is not fully or sufficiently informed in reference to the matters stated in the Statement of Claim, and does not admit all or any of the allegations therein contained.

2. The Attorney-General as aforesaid in particular does not admit that the said Testator did not know or approve of the residuary bequest contained in his said Will, or that he signed the said Will in a hurry, or without reading over the same, or that the said Will was not in accordance with his instructions, or was not read over by or to him before he executed it, and alleges that the said residuary bequest and the purport thereof were called to the attention or knowledge of the Testator before or at the time when he executed the said Will, and that the same did contain his wishes or intentions, and was in accordance with his instructions; nor does he admit that the Testator first became aware of the terms of the said residuary bequest after the execution of the said Will, or that he expressed or signified his disapproval of the said residuary bequest in the manner described in the fifth paragraph of the Statement of Claim or at all.

3. The Attorney-General informs the Court as follows: That the Testator duly executed a Will, dated , and thereby appointed the Plaintiffs executors thereof. Clauses 4 and 12 of the said Will were as follows:—

Clause 4—

I bequeath the following charitable legacies for which, as also for the shares of residue hereinafter bequeathed, the receipts of the Treasurers of the respective Societies or Institutions hereinafter named shall be sufficient discharges, that is to say: To the York County Hospital, 100%, to the York Blue Coat Boys and Grey Coat Girls' Schools, 100%, to the Yorkshire Philosophical Society, 100%, to the York Dispensary, 100%, to the Yorkshire School for the Blind, 100%, to the York Subscription Library, 50%, and to the St. Stephen's Orphanage, York, 25%.

Clause 12—

I devise and bequeath all the real and personal estate to which, at my death, I shall be beneficially entitled, or of which I shall have power to dispose beneficially by Will for any purpose I may think proper, and not hereby otherwise disposed of, unto the Trustees hereinbefore named absolutely Upon trust to sell the said real estate, including chattels real, and call in, sell, and convert into money such part of my personal estate as shall not consist of money, the sale of the contents of my dwelling house (except money and securities for money), to take place within six months of my decease, but with power to postpone the sale or conversion of the rest of my personal estate and of my real estate for such a period as the Trustees or Trustee may think proper. And I direct the Trustees or Trustee, out of the money to arise from the sale and conversion of my said real and personal estates, and out of my ready money, to pay my funeral and testamentary expenses and debts, and the legacies bequeathed hereby or by any codicil hereto, and the duty thereon, but so that all legacies shall be paid primarily out of my personal estate, and to stand possessed of the residue of the said money Upon trust to divide the same between and amongst the respective charitable societies and institutions mentioned in the fourth clause of this my Will, so that the sum paid to each such society or institution may bear the same ratio to the total amount of my residuary estate as the legacy by the said fourth clause bequeathed to the same society or institution bears to the total amount of the legacies bequeathed by the said fourth clause.

That if Probate of the Will of the is granted, omitting therefrom the last part of Clause 12 thereof as claimed by the Statement of Claim, the residue of the Testator's property is left undisposed of by such last-mentioned Will, and there being no clause revoking the said Will of the , the clauses of that Will hereinbefore set out stand unrevoked, and consequently the Testator did not die intestate in respect of the residue of his estate as claimed by the Statement of Claim, but that the charities named in Clause 4 of the Will of are entitled thereto in the proportion specified in Clause 12 thereof.

4. The Attorney-General on behalf of His Majesty claims all such rights and interests in the subject-matter of this action as he, on behalf of His Majesty, shall appear to have therein, and he submits the same to the judgment of this honourable Court, and he prays the Court to take care of the rights and interests of His Majesty in the premises.

Reply.

The Plaintiffs in reply to the Defence of His Majesty's Attorney-General filed herein on the day of say :—

1. That they join and take issue upon the said Defence as contained in the first and second paragraphs thereof.

2. As to the third paragraph of the said Defence they submit and allege that the true effect and construction of the last Will of the deceased is that an intestacy is created in respect of the residue of the deceased's estate and save and in so far as the said Defence may in any way admit such intestacy the Plaintiffs join and take issue upon the said Defence as contained in the third and fourth paragraphs thereof.

3. That at the time when the Testator gave instructions to his Solicitor Mr. G. H. for his last Will being dated the day of he expressed to his said Solicitor his intention and wish to revoke all gifts to charities.

The said last Will was prepared by taking away two sheets namely the first and the last sheets numbered one and five respectively from the previous Will dated the day of and the said two sheets which included the fourth paragraph of the said previous Will were subsequently destroyed in accordance with the said instructions.

Defence of the Attorney-General as Party Cited.

1. His Majesty's Attorney-General on behalf of His Majesty gives the Court to understand that he is not fully or sufficiently informed in reference to the matters stated in the Statement of Claim and does not admit all or any of the allegations therein contained.

2. The Attorney-General on behalf of His Majesty claims all such rights and interests in the subject matter of this action as he on behalf of His Majesty shall appear to have therein and he submits the same to the judgment of this Honourable Court and he prays the Court to take care of the rights and interests of His Majesty in the premises.

Another Form.

1. His Majesty's Attorney-General on behalf of His Majesty admits the first paragraph of the Statement of Claim and denies the second paragraph thereof.

2. Under the Will dated the day of the late A. B. the testator after making certain specific devises and bequests and subject to certain directions therein contained devised and bequeathed the residue and remainder of his real and personal estate unto the plaintiff C. D. to be by him distributed at his discretion as to one moiety thereof in public charities and as to the remaining moiety thereof in private charities and the testator thereby declared what the terms "public charity" and "private charity" should include.

3 The Attorney-General on behalf of His Majesty claims to have the said Will dated the day of established.

PART IV.

Proceedings under the Legitimacy Declaration Act, 1858.

Pleadings.

Petition.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Divorce.)

In the matter of a Declaration of the Legitimacy of A. B., a minor.

The day of 19 .

The Petition of A. B. of a minor by his next friend C. D. of .

Sheweth

1. That your Petitioner is a natural-born subject of His Majesty King Edward VII. and is domiciled in England.

2. That in or about the year E. B. then a subject of Her late Majesty Queen Victoria left this country and took up his residence at X. in Y.

3. That in or about the year at X. the said E. B. was lawfully married to F. G. in accordance with the laws of Y. and they resided together continuously from that time until .

4. That the said marriage took place by the natural and present consent of the said E. B. and the said F. G. but that there was no special ceremony form or manner of the making of the said marriage.

5. That subsequently to their said marriage the said E. B. and his said wife lived and cohabited together at various residences at X. and elsewhere as lawful husband and wife and during such time they owned and acknowledged each other to be husband and wife and had issue one child only videlicet your Petitioner born on the day of .

6. That on or about the day of your Petitioner's said parents having taken up their permanent residence in England went through a ceremony of marriage in accordance with the rules and ceremonies of the Established Church of England at and that there was no issue subsequent to such marriage. The said F. G. died at on the day of .

7. That the said E. B. died on at and was at the time of his death domiciled in England.

Your Petitioner therefore humbly prays that this Honourable Court will be pleased to order that His Majesty's Attorney-General and all other proper parties may be cited and thereafter to make a decree declaring:—

1. That the said E. B. and F. G. were lawfully married prior to the birth of your Petitioner.

2. That your Petitioner is the legitimate son of the said E. B. and F. G.

3. That your Petitioner is a natural-born subject of His Majesty the King.

And that your Petitioner may have such further and other relief as to this Honourable Court may seem meet.

(Signed) A. B.

Answer of the Attorney-General.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Divorce.)

In the matter of the Legitimacy Declaration Act, 1858, and in the matter of the petition of A. B., a minor, by his next friend C. D. for a declaration of the legitimacy of the said A. B.

A. B., a minor (by C. D. his next friend) - - - - Petitioner,
and

HIS MAJESTY'S ATTORNEY-GENERAL - - - - Respondent.

The answer of Sir H. K., His Majesty's Attorney-General, to the petition of the above-named Petitioner.

His Majesty's Attorney-General says:—

1. He does not admit [*the allegations in the Petition are put in issue*].

The Attorney-General therefore prays the Court that it will be pleased to reject the prayer of the said Petition.

Another Form.*Petition.*

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Divorce.)

To the Right Honourable the President of the said Division.

The day of . . .

In the matter of the Legitimacy Declaration Act, 1858,
and

In the matter of the Petition of A. B. for a declaration of the validity of her marriage.

The Petition of A. B. of sheweth:—

1. That your Petitioner is a natural-born subject of His Majesty King Edward VII. of Great Britain and Ireland and is domiciled in England.

2. That your Petitioner was on the day of lawfully married to C. B. a domiciled British subject then temporarily resident in X. at the Cathedral of Y. at Z. by P. Q.

3. That after the said marriage your Petitioner lived and cohabited with her said husband &c.

4. That there was issue of such marriage children as follows:—

5. That from the time of the marriage of your said Petitioner with the said C. B. until the present time they have lived and have cohabited together as lawful husband and wife and have acknowledged each other to be husband and wife and were and are accounted to be lawful husband and wife amongst their neighbours, friends, acquaintances and others, and that such marriage was and is an open and notorious fact.

6—14. [*Set out the previous marriage of the Petitioner to E. F. and her belief in the validity of her divorce from him and of her subsequent marriage.*]

15. That your Petitioner has for years rested content and was willing now to rest content in the belief that her said marriage was a valid one, but she has been driven by the false allegations of the said E. F. to bring this proceeding for the purpose of getting a judicial determination by this Honourable Court that shall settle once for all the validity of the said marriage and the legitimacy of her said children.

Your Petitioner therefore humbly prays that your Lordship will be pleased to entertain this her application and allow her to prosecute the necessary proceedings, and thereupon to order that His Majesty's Attorney-General and all the proper parties may be cited, and thereafter will be pleased to hear and determine the same and to pronounce (on sufficient evidence being adduced by her on her behalf) that the said A. B. and C. B. were lawfully married on the day of .

And that your Petitioner may have such further or other relief in the premises as to your Lordship may seem meet.

(Signed) A. B.

NOTE.—The Petition of which this is a copy will be filed on the expiration of one month from day of the date of delivery hereof to His Majesty's Attorney-General.

Answer of the Attorney-General.

[As in Form on p. 558.]

Answer of Party Cited.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Divorce.)

The day of .

In the matter of the Legitimacy Declaration Act, 1858,
and

In the matter of the Petition of A. B. for a declaration of the validity of her marriage.

The Attorney-General and E. F. cited to see the proceedings.

E. F. cited by order of the Court dated to see the proceedings by G. H. his Solicitor in answer to the Petition filed in this cause saith:—

1—6. [*Deal with the allegations in the Petition.*]

Wherefore the said E. F. humbly prays:—

That your Lordship will be pleased to reject the prayer of the said Petitioner.

Reply of Petitioner to Answer of Party Cited.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Divorce.)

The day of .

In the matter of the Legitimacy Declaration Act, 1858,
Between A. B. - - - - - Petitioner,
and

THE ATTORNEY-GENERAL and E. F. - - - Respondents.

The Petitioner A. B. by K. L. her solicitors in reply to the Answer filed herein by E. F. on the day of , saith:—

1—2. [*Traverse allegations in Answer.*]

3. That save as aforesaid she joins and takes issue upon the said Answer except in so far as the same amounts to admission.

Wherefore the Petitioner prays as before, and further that the same E. F. be condemned in the costs of and incidental to these proceedings.

PART V.

Proceedings under the Vexatious Actions Act, 1896.

Notice of Motion.

IN THE HIGH COURT OF JUSTICE.

King's Bench Division.

In the Matter of the Vexatious Actions Act, 1896,
and

In the Matter of A. B.

Take notice that the Divisional Court will be moved on Tuesday the day
of 19 at the sitting of the Court or as soon thereafter as Counsel
can be heard by the Attorney-General for an order that no legal proceedings
shall be instituted by you in the High Court or in any other Court unless you
obtain the leave of the High Court or some Judge thereof and satisfy the Court
or Judge that such legal proceeding is not an abuse of the process of the Court
and that there is *prima facie* ground for such proceeding.

Dated this day of 19 .

Yours, &c.,

A. T. HARE,

Treasury Solicitor,

Law Courts Branch,

276, Royal Courts of Justice,
Strand, London, W.C.

To the above-named A. B.

10, X. Street, Y.

BOOK VI.

Points of Practice and Procedure.

CHAPTER I.

PLEADING.

Pleading by and on behalf of the Crown.

Pleading Double.

THERE is no doubt that the Crown can plead double or plead and demur, both to petitions of right and elsewhere. (*Tobin v. R.* (1863), 14 C. B. (N. S.) 505; 32 L. J. C. P. 216; see further, above, pp. 386, 388.) In that case Willes, J., refers to the precedent of a replication by the Attorney-General to a traverse of office, a striking instance of more than double pleading, which is printed in Manning, Exch. Pr. (ed. 2), App. D., p. 255. *Tobin v. R.* was followed in *R. v. Diplock* (1868), 19 L. T. 380, where several pleas were allowed the Crown, in a replication to a return to an information in the nature of a *quo warranto*. See also Chitty, Prerog. 369, as to the Crown's reply to traverses.

Pleading in General Terms.

33 Hen. VIII. c. 39, s. 50 (p. 660), provides that in all actions and suits for the recovery of any debt due to the King it shall be sufficient in the law to show and allege generally the manner in which the debt is due to the King, without showing and declaring the particular circumstances.

It was held in *Tobin v. R.* (1863), 14 C. B. (N. S.) 505; 32 L. J. C. P. 216, that the Crown could put in issue the whole of the allegations of a petition of right by a general traverse, though the Court suggested that it might interfere to prevent injustice or prejudice to the suppliant, if such was caused by the Crown's general plea. It probably could so interfere in the case of petition of right, to which Ord. XIX. r. 27 is applied by sect. 7 of the Petitions of Right Act, 1860, there not being any such prerogative of the Crown in this

behalf as would override that section; but there does not seem to be any such power in the Court in matters on the Revenue side of the King's Bench Division, to which Ord. XIX. r. 27 does not apply; unless, indeed, it can be said to have an inherent jurisdiction to do so.

In *Errington v. A.-G.* (1731), Bunb. 303, the Attorney-General was given leave to withdraw his general answer, praying the Court to take care of the interests of the Crown, and put in a special answer instead, insisting on the Crown's right.

Note that in an action of debt upon a penal statute the plaintiff must particularise each offence. (*Chance v. Adams* (1696), 1 Ld. Raym. 77.)

Defence or Answer and Replication.

The Attorney-General, when defendant, will or will not put in a defence or answer at his discretion, if he thinks the interests of the Crown or public justice require or do not require it. See *Colebrooke v. A.-G.* (1807), 7 Price, 146, 192; *Craufurd v. A.-G.* (1819), 7 Price, 1, 4; *Deare v. A.-G.* (1835), 1 Y. & C. 197, 208, and the observations on the matter in connection with Chancery and Probate suits above, pp. 477, 499. It was said in *R. v. Musters* (1744), Park. 50, that where a defendant pleads a title against the Crown and the Attorney-General will not reply or demur in a reasonable time, the defendant must apply to the Attorney-General to proceed, and, if he will not, the Court may give judgment for the defendant as if the Attorney-General had confessed the plea. *Sed quære*; see what is said above, pp. 218, 394, on this subject.

In *Lautour v. A.-G.* (1865), 5 N. R. 102, 231, the Court ordered the Attorney-General to file an answer, thinking that such delicate and difficult questions were raised that the demurrer should be reserved till the hearing.

Counterclaim.

The Crown does not set up a counterclaim to a petition of right at common law, though it has done so to a petition of right in the Chancery Division: see the precedent printed above, p. 419. In the Chancery Division generally, where the Attorney-General is a defendant, he will counterclaim, where circumstances require it, in the same manner as an ordinary defendant.

Amendment.

It was said in *R. v. Delme* (1714), 10 Mod. 199, 200, that the Crown may amend its pleadings at any time. So *A.-G. v. Henderson* (1786), 3 Anst. 714, cited more fully above, p. 213. Comyns, Dig.

Praerog. D. 85, says that the King may amend his declaration in the same term, but not in another term. He cites Y. B. P. 13 Edw. IV. pl. 1: "En un quare impedit pur le Roy declaration fuit fait, et en l'auter terme il voilloit aver vary de le dit declaration et fair novel, sed non potuit, mes mesme le terme il puit, etc." (see Y. B. M. 28 Hen. VI. pl. 8); and *R. v. Bishop of Worcester* (1670), Vaugh. 53, 65, where it was said: "If the King take issue upon a traverse to an office, he cannot in another term change his issue, by traversing the defendant's title, for then he might do it infinitely . . . and tye the defendant to perpetual attendance." *Willion v. Berkley* (1562), Plowd. 223, 243, is to the same effect. In *Sir Henry Glemham's Case* (1618), Poph. 144, the King was allowed to amend his replication after three years. See also as to the amendment of Latin informations, above, p. 213.

The statutes of jeofails did not extend to any Crown suits (*A.-G. v. Farnham* (1670), Hard. 504), till they were applied to suits in the High Court for the recovery of debts or revenue owing to the Crown by 4 & 5 Ann. c. 3 (4 Ann. c. 16, Ruff.), s. 24. (See *R. v. Caldwell* (1801), Forr. 57, below, p. 564.)

Pleading against the Crown.

Defence to an Information of Debt.

33 Hen. VIII. c. 39, s. 55, provides that if any person of whom any Crown debt or duty is demanded alleges, pleads, declares, or shows, in any of the Courts mentioned in the Act, good, perfect and sufficient cause and matter in law, reason, or good conscience in bar or discharge of such debt or duty, or why such person should not be so charged, and sufficiently proves his plea, the Court may allow such proof, and acquit and discharge him. This section applies to all Crown debts, both under the statute and at common law. (*Sir Thomas Cecil's Case* (1597), 7 Rep. 18 b, 19 a.)

Under the words "good conscience" in this statute the defendant can plead matter of equity. (*Trallop's Case* (1610), Lane, 51; *Sir Thomas Cecil's Case*, *ubi sup.*; *Hix v. A.-G.* (1661), Hard. 176; *Savile v. Queen Mother* (1669), Hard. 502.) See also the cases as to equitable mortgages held to take precedence of a Crown debt, p. 168.

Pleading Double.

It was held in *A.-G. v. Donaldson* (1841), 7 M. & W. 422; 10 L. J. Ex. 139, an information of intrusion, that the statute 4 & 5 Ann. c. 3 (4 Ann. c. 16, Ruff.), s. 4, which permitted double pleading with the leave of the Court, did not extend to such a case, and therefore the Court could not compel the Attorney-General to plead to several

matters. That case followed *A.-G. v. Allgood* (1743), Park. 1, also an information of intrusion, where it was pointed out that *R. v. Huggins* (1730), 2 Com. 422, to the contrary effect, was incompletely reported. But the Attorney-General might give the defendant leave to plead double. (*A.-G. v. Pack* (1661), Hard. 189.)

In *A.-G. v. Snow* (1721), Bunb. 96, an information of debt upon a bond, the matter was queried. Double pleading was not allowed in *R. v. Archbishop of York* (1745), Barnes (ed. 3), 353, a *quare impedit*, nor in *R. v. Caldwell* (1801), Forr. 57, a *scire facias* on a bond. In the last-cited case it was said to be clearly decided that sect. 24 of 4 & 5 Ann. c. 3 (4 Ann. c. 16, Ruff.), which applies that Act and all the statutes of jeofails to all suits in the High Court for the recovery of any debt immediately owing, or any revenue belonging, to the Crown, only so applied such portions of that Act as relate to jeofails, and therefore sect. 4, which allowed double pleading, was not so applied.

There is no reason for doubting that it is still the law, there having been no provision which binds the Crown to the contrary, that the Crown can, if it chooses, prevent a defendant from pleading double against it. But the point has seldom been taken in more recent times (see the precedent printed above, p. 268).

In *A.-G. v. Trustees of the British Museum*, [1903] 2 Ch. 598; 72 L. J. Ch. 743, for instance, the defendants pleaded double, by denying that the articles claimed were treasure trove, and by alleging that, if they were treasure trove, they belonged to the defendants by grant from Crown grantees (see above, p. 545). The Crown did not object to the double plea as such, though they had materials for doing so, as the author has good reason to know, but took an objection to the second plea on the grounds dealt with below. In traverse of escheat, if the traverser is to be regarded as a defendant (see above, p. 439), he is under the same disability as to pleading double against the Crown as any other defendant. Thus, in *R. v. Slagg* (1886), not reported, Pearson, J., decided that the traverser could not plead double. But it seems that he may file separate pleas to distinct parts of the inquisition, or traverse as to part and demur as to the residue. (See the pleadings in *R. aux. Viscount Falkland v. Woodhouse* (1683), Trem. P. C. 581.) See, further, the observations in Manning, Exch. Pr. (ed. 2), p. 105; but his remarks on pp. 105, 106, as to traverse by a party as plaintiff are subject to the criticism which has been made on p. 439, above.

Setting up a Jus Tertii.

Objection was taken by the Crown on this ground, as already stated, in *A.-G. v. Trustees of the British Museum*, [1903] 2 Ch.

598; 72 L. J. Ch. 743, though the Court found it unnecessary to give any judgment on the point. The principle applying to informations of intrusion, apart from 21 Jac. I. c. 14, that the defendant must show his own title (see above, p. 182), appears to be of general application. The same rule exists as to pleading to extents (see Manning, Exch. Pr. (ed. 2), p. 96). In *A.-G. v. Trustees of the British Museum, ubi sup.*, the Crown was unable to find a case in which a *jus tertii* had been set up against the Crown except *R. v. Mason* (1702), 2 Salk. 447, a *monstrans de droit*, and it was pointed out that the decision in that case, so far as it went, was in favour of the view that such a right could not be set up. See also what was said in *A.-G. v. Burridge* (1822), 10 Price, 350, 370.

Counterclaim and Set-off.

No counterclaim can be set up at common law against the Crown; the subject must proceed by petition of right (see *Secretary of State for War v. Easdale* (1893), 27 L. L. T. R. 70). It is otherwise in actions by the Attorney-General or the Treasury Solicitor in the Chancery or Probate Divisions.

There can be no set-off against the Crown (*R. v. Copeland* (1799), Hughes, 204, 230). It was held, however, that the principle did not apply in that particular case. In *R. aux. Lund v. Sherwood* (1816), 3 Price, 269, the general principle was admitted, but the Court thought that, on an extent in aid, the Crown could scarcely be in a better position in this respect than the Crown's debtor. *Hettihe wage Siman Appu v. Queen's Advocate* (1884), 9 A. C. 571; 53 L. J. P. C. 72, will be found, if examined, not to be an authority to the contrary. Compare *R. v. Ellis* (1814), 1 Price, 23, a *scire facias* on a bond to the Crown, where a plea of payment after day but before writ issued, and acceptance by the Crown in satisfaction, was held to be insufficient, as the King was not bound by 4 & 5 Ann. c. 3 (4 Ann. c. 16, Ruff.), s. 12. As to set-off on petition of right, see above, p. 386.

CHAPTER II.

LIMITATION OF TIME.

General Observations.

THE general rule that the Crown is not bound by a statute unless an intention to bind it clearly appears (see *Hornsey U. D. C. v. Hennell*, [1902] 2 K. B. 73; 71 L. J. K. B. 479, and many other cases) applies, of course, to Statutes of Limitation. Thus it was said by Sugden, L.C., in *R. v. Bayly* (1841), 1 Dr. & War. 213, 222: "It is a settled principle, established in the earliest cases, that the Crown is not bound by any Statute of Limitations unless expressly included."

On these principles it was held in *Lambert v. Taylor* (1825), 4 B. & C. 138; 3 L. J. (O. S.) K. B. 160, that the rights of the Crown were not bound by the Limitation Act, 1623 (21 Jac. I. c. 16), and in *A.-G. v. Magdalen College, Oxford* (1854), 18 Beav. 223; 23 L. J. Ch. 844, that the Crown was not barred by the Real Property Limitation Act, 1833 (3 & 4 Will. IV. c. 27); but in the same case, on appeal (*s.n. St. Mary Magdalen, Oxford v. A.-G.* (1857), 6 H. L. C. 189; 26 L. J. Ch. 620), it was held that where the Attorney-General, having no independent rights of his own, stands only in the same position as those who are entitled to the benefit of a charity and so sues, he is barred if they are barred.

So in a prerogative process by the Crown on behalf of its debtor against a debtor *paravaile* the Crown cannot be in any better position than its debtor, and the statute may be pleaded against it (*R. v. Morrall* (1818), 6 Price, 24); but not where the Crown, though it took a recognisance as a Royal trustee on behalf of the parties to a suit, is suing directly on such recognisance. (*R. v. Bayly* (1841), 1 Dr. & War. 213.) Time, which is running against a creditor, ceases to run when the debt gets into the hands of the Crown. (*Lambert v. Taylor* (1825), 4 B. & C. 138; 3 L. J. (O. S.) K. B. 160.)

Apart, then, from any statutory provision which binds the Crown, and certain cases where a Crown grant has been presumed (see below, p. 573), the maxim "*Nullum tempus occurrit regi*" applies. (See Co. Lit. 119 a, n. (1).) "*Le roy est prerogatif; per quey nul prescripcion de tems ne court encontre luy.*" (Y. B. 20 Edw. I. p. 69 (Rolls Series).)

The question whether the Crown can take advantage of Statutes of Limitation by which it is not bound, although they cannot be used against the Crown, is more difficult. It was said in the *Magdalen College Case* (1616), 11 Rep. 66 b, 68 a, b: "Be the statute affirmative or be it negative, which is stronger, it shall not bind the King unless he is specially named, but he shall take benefit of a statute although he be not named . . . also the Statutes of Limitations, *scil.* of Merton, cap. 8, W. 1, c. 3, and 32 H. 8, cap. 2, have never bound the King." In *Willion v. Berkley* (1562), Plowd. 223, 243, we find: "No custom can restrain the liberty of the King; and so cannot any statutes which don't make mention of the King in express terms. But yet the King, though not named in statutes, shall take advantage of them as another shall do"; and in *R. v. Buckberd* (1594), 1 Leon. 149, Popham, A.-G., *arguendo*, said: "Of all statutes made for the benefit of the subjects the King shall take advantage." Chitty, Prerog. 382, says that, though the King may avail himself of the provisions of any Acts of Parliament, he is not bound by such as do not particularly and expressly mention him. (See also 2 Steph. Comm. (ed. 14), 498; and *A.-G. for New South Wales v. Curator of Intestate Estates*, [1907] A. C. 519; 77 L. J. P. C. 14.) It would seem, then, that if the Court would apply these principles at the present day (they were applied in Ireland in *R. v. Cruise* (1851), 2 Ir. Ch. R. 65), the Crown could claim the benefit of Statutes of Limitation, which could not be used against it. See, too, *A.-G. v. Tomline* (1880), 15 Ch. D. 150. These observations do not apply, however, to petitions of right, for special reasons (see above, p. 393).

Recovery of Hereditaments and Rents by the Crown.

The Crown Suits Act, 1769 (9 Geo. III. c. 16), often called the Nullum Tempus Act, provides (sect. 1) that the Crown shall not sue or implead any person for any hereditaments or rents or profits by reason of any right or title which has not first accrued within sixty years before suit, unless the Crown, or some person under whom the Crown claims, has been answered by virtue of any such right, or taken the rents or profits of them, or of hereditaments of which they form part, within such sixty years [or the same have been duly in charge to the Crown, or have stood insuper of record within such period]; and that otherwise the subject is to be secured in the free and quiet enjoyment of the property as well against the Crown as against all persons claiming any estate or interest therein by colour of any letters patent or grants, upon suggestion of concealment, or wrongful detaining, or not being in charge, or defective titles, for which no judgment has been given for the Crown within the previous sixty years.

[Rents and profits (sect. 2) are to be deemed to be in charge when they are in charge to any proper officer of the revenue, but no putting in charge, or standing insuper, or taking or answering the rents and profits of hereditaments, is to be deemed such unless thereupon such hereditaments have in some information or suit on behalf of the Crown been adjudged to belong to the Crown within sixty years previous (sect. 10).]

In the case of reversions or remainders to the Crown, or limited estates granted by the Crown (sects. 3, 4), the sixty years runs from the time when the estate comes or ought to come into possession.

The above provisions, so far as they relate to hereditaments having been in charge or having stood insuper of record, are virtually repealed by the Crown Suits Act, 1861 (24 & 25 Vict. c. 62), s. 1. The same Act further provides (sect. 3) that the Crown is not to be deemed to have been answered the rents of hereditaments by reason of their having been part of hereditaments whereof the rents have been so answered. By sect. 4 the sixty years is to run, in the case of a demise or lease, from the time when the demise or lease expires, as against any person whose enjoyment of the hereditaments or receipt of the rents and profits commenced during the term of such demise or lease, or who claims under such person.

The above provisions were extended to the Duke of Cornwall and the possessions of the Duchy of Cornwall, with certain specific exceptions, by 7 & 8 Vict. c. 105, ss. 71—88; 23 & 24 Vict. c. 53; and the Crown Suits Act, 1861, s. 2.

The corresponding Acts relating to Ireland are: The Crown Claims Limitation (Ireland) Act, 1808 (48 Geo. III. c. 47), and the Nullum Tempus (Ireland) Act, 1876 (39 & 40 Vict. c. 37).

The Irish Act of 1808 was discussed at great length in *Tuthill v. Rogers* (1844), 1 Jo. & Lat. 36, and what was said there appears to be applicable, *mutatis mutandis*, to the English Act of 1769. It was there held that the title of the Crown was barred and transferred by virtue of the two portions of sect. 1, which corresponds to sect. 1 of the English Act.

But it was said by Lord Ellenborough, C.J., in *Goodtitle d. Parker v. Baldwin* (1809), 11 East, 488, that the Crown Suits Act, 1769, does not give a title, but only takes away the right of suit of the Crown, or those claiming from the Crown, against such as have held an adverse possession against it for sixty years.

As to the nature of Acts which will amount to an adverse possession against the Crown, see *Doe d. William IV. v. Roberts* (1844), 13 M. & W. 520; 14 L. J. Ex. 274; *A.-G. for British Honduras v. Bristowe* (1880), 6 A. C. 143; 50 L. J. P. C. 15.

The question whether advowsons were included in the statutes was discussed, but not decided, in *Gibson v. Clark* (1819), 1 Jac. & W. 159, and the matter is much discussed in Brown's Law of Limitation as to Real Property, p. 322.

The statutes, of course, only apply to suits by the Crown. (Compare *Secretary of State for India v. Kota Bapanamma Garu* (1895), I. L. R. 19 Mad. 165.)

In *A.-G. v. Lord Eardley* (1820), 8 Price, 39, it was held that returns of any particular subject-matter by the auditors in their accounts of the Crown revenue were sufficient proof of its having been kept in charge to protect the claim of the Crown from the Act of 1769, although they had returned "*nil*" and the claim had not been put in suit for more than sixty years. This case followed *A.-G. v. Maxwell* (1814), 8 Price, 76, n., and both of them concerned the recovery of tithes belonging to the King *jure coronae*. These decisions were doubted in *Tuthill v. Rogers* (1844), 1 Jo. & Lat. 36. The point is not of great importance, on account of the provisions of the Crown Suits Act, 1861, s. 1 (above, p. 568); but in *In re Maxwell's Estate* (1891), 28 L. R. Ir. 356, the Court held that the Nullum Tempus (Ireland) Act, 1876 (corresponding to the Crown Suits Act, 1861), did not apply to a claim by the Crown to arrears of a quit rent, and that such a rent, payable to the Crown and entered in the Crown rental at the date of its creation, which had not been received for sixty years, was a rent "duly in charge" within sect. 1 of the Crown Claims Limitation (Ireland) Act, 1808, following *A.-G. v. Eardley*, *ubi sup.*

But it is now specifically provided by the Crown Lands Act, 1906 (6 Edw. VII. c. 28), s. 9, that no proceedings shall be taken by or on behalf of the Crown for enforcing the payment of any quit rent, or any other perpetual rent payable to the Crown in Ireland, or any arrears thereof, but within sixty years from the time when such rent was last received by or on behalf of the Crown, and after the expiration of that period the right of the Crown to the rent and arrears shall be extinguished.

As to what amounts to an answering of rents to the Crown by force of any right or title to the same, see *Tuthill v. Rogers* (1844), 1 Jo. & Lat. 36.

It was held in *A.-G. for New South Wales v. Love*, [1898] A. C. 679; 67 L. J. P. C. 84, that the Crown Suits Act, 1769, is in force in New South Wales.

As to the Scottish law, see *L. A. v. Graham* (1844), 7 D. 183; *L. A. v. Stirling Magistrates* (1846), 8 D. 450; *L. A. v. Young* (1887), 12 A. C. 544.

Informations of Debt and in Rem.

The general freedom of the Crown from limitation of time is cut down by various statutory provisions limiting the time for the recovery of various species of revenue, which are mentioned above, pp. 64, 68. Special mention may be made here of the Customs Consolidation Act, 1876, s. 257 (p. 726), which limits all suits, indictments, or informations for any offence against the Customs Acts to three years after the date of the offence, and to the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), ss. 12—14, which provides certain limitations of time for the recovery of succession and legacy duty. These latter provisions were extended to estate duty by the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 8 (2).

Actions and informations on penal statutes, where the forfeiture is to the Crown only, were limited by 31 Eliz. c. 5, s. 5, to two years after the offence; and such actions and informations, where the benefit and suit is to the Crown and to the informer (*i.e.*, *qui tam* informations), were limited to one year after the offence—unless some shorter time was expressly limited by statute. This section was repealed, so far as relates to informations, by sect. 36 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), which repealed so much of the Act “as relates to the time limited for exhibiting an information for a forfeiture upon any penal statute,” but is still in force with regard to actions. It has been held to apply to every class of action on penal statutes, and consequently a person suing for a penalty for himself alone must bring his action within a year after the offence, just as though he were suing as an informer *qui tam*. (*Dyer v. Best* (1866), L. R. 1 Ex. 152; 4 H. & C. 189; 35 L. J. Ex. 105, where the contradictory earlier decisions are discussed.) See now also the Finance Act, 1907 (7 Edw. VII. c. 13), s. 23 (1).

In the case of an information by the Attorney-General for the recovery of forfeitures under a penal statute, it was held that, for the purposes of the statute of Elizabeth, the commencement of the proceedings must be taken to be the issuing of process, and not the actual filing of the information. (*A.-G. v. Hall* (1823), 11 Price, 760.)

It was said in *A.-G. v. Forbes*, Rowe, 394, that there was no difference between informations *in rem* and informations *in personam* for the purposes of limitation.

Informations of Intrusion.

By 21 Jac. I. c. 14, when the Crown and those under whom it claims, and all others claiming under the same title as the Crown,

have been out of possession, or have not taken the profits of any hereditaments within twenty years before an information of intrusion to recover the same, the defendant may plead the general issue, and still retain possession until the title be found or adjudged for the Crown. (See further above, p. 180.)

Proceedings against Public Accountants.

Certain statutory limitations of time in connection with these proceedings are noticed in the course of the chapter which deals with them (above, p. 158). It was held in *Brummell v. M'Pherson* (1828), 5 Russ. 263; 7 L. J. (O. S.) Ch. 1, that moneys of the Crown in the hands of an army agent might be recovered by the Attorney-General on behalf of the Crown without any limitation of time.

Petition of Right.

The Limitation Act, 1623 (21 Jac. I. c. 16), does not apply to proceedings by petition of right. (*Rustomjee v. R.* (1876), 1 Q. B. D. 487; 45 L. J. Q. B. 249.) The matter is fully discussed above, p. 393, where reference is also made to the Intestates Estates Act, 1884, s. 3.

Recovery of Personal Estate of Deceased Persons.

Where administration of the personal estate of a deceased person has been granted to a nominee of the Crown, any action or other proceeding by or against such nominee for the recovery of such estate, or any share thereof, is to be of the same character, and carried on in the same manner, and subject to the same rules of law and equity (including the rules of limitation under the Statutes of Limitation or otherwise), as if administration had been granted to such nominee as next of kin of the deceased. (Intestates Estates Act, 1884, s. 2, printed below, p. 735.) This provision, therefore, places the Crown's nominee in exactly the same position as any ordinary administrator in proceedings for the recovery of the personal estate of the deceased, both as regards limitation of time and otherwise. The Crown itself is also placed in a similar position by sect. 3 of the same Act.

Proceedings in respect of Debts of the Heir Apparent.

By the Heir Apparent's Establishment Act, 1795 (35 Geo. III. c. 125), s. 7, every creditor of the Heir Apparent must deliver at the office of the treasurer or principal officer or officers of the Heir Apparent signed particulars in writing of his demand within ten days after the expiration of the quarter of the year in which such demand has accrued. Debts or demands of which particulars have not been

delivered as aforesaid are barred both at law and in equity, and any securities therefor are void. If any officer, to whom such particulars are duly delivered, neglects or refuses to insert them in his account of the quarterly expenses, he shall be liable to pay the amount of the demand as damages to the party aggrieved. By sect. 8, no action or suit, either at law or in equity, is to be brought by any creditor against the Heir Apparent in his own name as a party, for the recovery of any debt or demand whatsoever due or claimed to be due from the Heir Apparent, nor upon any bond, bill, or note, or any security for such debt or demand, but all proceedings in such action and suit shall be null and void.

By sect. 9, when particulars have been duly delivered, as provided in sect. 7, and the demand has not been met, the creditor, within three calendar months after the delivery of such particulars, but not afterwards, may sue for the recovery of such debt or demand, making defendant the treasurer or other principal officer or officers of the Heir Apparent, to whom the particulars were delivered. Execution is not to issue against the defendant or his effects, but the judgment is to be a charge against the funds of the Heir Apparent in the defendant's hands, and the debt, damages and costs are to be paid out of such funds in preference to all debts and demands, except such as arise from a prior judgment obtained in like manner. A note or docket of every judgment so obtained must be entered by the judgment creditor in the office of the treasurer or other principal officer or officers within ten days after signing the same.

By sect. 10, an officer neglecting or refusing to prepare accounts or to apply moneys in accordance with the Act is liable to pay damages and costs to the party aggrieved, on action brought in the High Court.

Claims for Indemnity under the Land Transfer Act, 1897.

By this Act (60 & 61 Vict. c. 65), s. 7 (7), claims for indemnity under that section (see further as to these, above, p. 101) are to be deemed simple contract debts for the purposes of the Limitation Act, 1623, and the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might know, of the existence of his claim. The section applies to the Crown in like manner as it applies to a private person.

The Prescription Act, 1832.

The first two sections of the Prescription Act, 1832 (2 & 3 Will. IV. c. 71) (applied to Ireland by the Prescription (Ireland) Act, 1858 (21 & 22 Vict. c. 42), s. 1), apply specifically to the Crown. No

claim to right of common or other *profit à prendre* (sect. 1), to be taken and enjoyed from or upon any land of the Crown or any land parcel of the Duchies of Lancaster or Cornwall, is to be defeated, after thirty years' enjoyment without interruption by a person claiming right thereto, by showing the commencement of such enjoyment; and after sixty years' enjoyment the right is to be absolute, unless had by consent or agreement in writing. Sect. 2 provides for periods of twenty and forty years respectively in similar terms for claims of rights of way or other easements, or of watercourses or the use of any water. The Crown, however, is not bound by sect. 3 of the Act, which refers to claims to the use of light, nor can claims to light be held to fall within sect. 2. (*Perry v. Eames*, [1891] 1 Ch. 658; 60 L. J. Ch. 345; *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963.) The latter case also decided that where the plaintiff could not establish his right against the Crown as reversioner, he could not establish a right against the Crown's lessees, inasmuch as an easement, if acquired by prescription, either at common law or under the statute, must be absolute, and not for a term of years.

Presumption of Grants from the Crown.

In spite of the fact that time does not run against the Crown apart from special provisions, a grant from the Crown has sometimes been presumed by the Court. Thus, in *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963, Kekewich, J., said: "No doubt there can be a presumption of a lost grant against the Crown; that is established by many cases, and especially, I think, by the case of *Goodman v. Saltash Corporation* (1882), 7 A. C. 633; 52 L. J. Q. B. 193." The case thus cited was a case of a several oyster fishery. In *A.-G. v. Portsmouth Corporation* (1878), cited in Stuart Moore, *Foreshore*, pp. 555, 557, Cotton, L.J., says: "The Crown is entitled, by its prerogative, to the foreshore on all the coasts of England and in all inlets of the sea, unless and except so far as any subject can establish title to any portion thereof, either by proving a grant thereof made by the Crown, or facts from which such a grant may be presumed, or by proving possession for the period necessary to establish a title against the Crown." So in *Benest v. Pipon* (1829), 1 Knapp, 60, 68, it was said: "The sea is the property of the King, and so is the land beneath it, except such part of that land as is capable of being usefully occupied without prejudice to navigation, and of which a subject has either had a grant from the King, or has exclusively used for so long a time as to confer on him a title by prescription: in the latter case a presumption is raised that the King

has either granted him an exclusive right to it, or has permitted him to have possession of it, and to employ his money and labour upon it, so as to confer upon him a title by occupation—the foundation of most of the rights to property in land.” See also *Parmeter v. A.-G.* (1813), 1 Dow, 316; and *A.-G. v. Wright*, [1897] 2 Q. B. 318; 66 L. J. Q. B. 834, in which latter case a grant from the Crown or from a Crown grantee of the right to fix moorings on the foreshore was presumed.

Crown grants of very various natures have been presumed: of the right to take tolls on certain imports or vessels (*Kingston-upon-Hull Corporation v. Horner* (1774), 1 Cowp. 102; *Foreman v. Free Fishers and Dredgers of Whitstable* (1869), L. R. 4 H. L. 266; 38 L. J. C. P. 345), of a highway (*Turmer v. Walsh* (1881), 6 A. C. 636; 50 L. J. P. C. 55), of a right of way (*Campbell v. Wilson* (1803), 3 East, 294), of a manor (*Merttens v. Hill*, [1901] 1 Ch. 842; 70 L. J. Ch. 489), of an advowson (*Gibson v. Clark* (1819), 1 Jac. & W. 159), of parish property (*A.-G. v. Lord Hotham* (1827), 3 Russ. 415). In *Roe d. Johnson v. Ireland* (1809), 11 East, 280, it was held that the enfranchisement of a copyhold might, on proper evidence, be presumed against the Crown; and in *Simpson v. Gutteridge* (1816), 1 Madd. 609, fee-farm rents, created by Royal letters patent, were presumed to be extinguished; compare *Flower v. Hartopp* (1843), 6 Beav. 476; 12 L. J. Ch. 507. As to a free fishery, see *Lord Chesterfield v. Harris*, [1908] 1 Ch. 230; 77 L. J. Ch. 111.

Undoubtedly the presumption of a Crown grant is more difficult than such a presumption in the case of a subject. As Ashhurst, J., says in *Read v. Brookman* (1789), 3 T. R. 151, 158, “that is the strongest instance of a presumption, because all grants from the Crown are matters of record.” Presumptions have been made “even of letters patent of the Crown, which must be upon record.” (*Pickering v. Lord Stamford* (1793), 2 Ves. Jun. 272, 282, per Sir R. P. Arden, M.R.) But a grant will not be presumed where the Crown is by statute disabled from making such a grant, as in *Goodtitle d. Parker v. Baldwin* (1809), 11 East, 488, or where the enjoyment was against a grantee or lessee of the Crown, and not against the Crown itself. (*Holcroft v. Heel* (1799), 1 B. & P. 400; *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963.) Where the alleged Crown grant appears by the evidence to be enrolled, but is not produced by the plaintiff, the jury should not presume it upon mere evidence of usage. (*Brune v. Thompson* (1843), 4 Q. B. 543; 12 L. J. Q. B. 251.)

CHAPTER III.

THE STATUTE OF FRAUDS.

THE Crown is not named in, and is therefore not bound by, the Statute of Frauds (29 Car. II. c. 3). (See the argument in *R. v. Mann* (1726), 2 Stra. 749, 751; Gilb. Eq. 220, 221.) It was said in *Addlington v. Cann* (1744), 3 Atk. 142, 154, per Lord Hardwicke, L.C., referring to *R. v. Lady Portington* (1692), 1 Salk. 162: "They held that the Statute of Frauds did not bind the King, but took place only between party and party. I own I am doubtful as to this doctrine that the King is not bound by a statute unless he is expressly named. There is a case, however, where it has been determined that he is not, and that is upon the sixteenth section of the Statute of Frauds. [He read the section and continued:—] Now the King, notwithstanding this clause in the case of extents and executions, is not bound by the teste; as where, in a long vacation, the teste is dated as of the last day of the precedent term, it shall prevail against intermediate acts between the King's debtor and other persons, though the practice is, in extents granted by a baron, to mark the day of granting them, and they do not bind before that day."

But it is probable that, though not bound by the statute, the Crown might pray it in aid, on the general principle discussed above, p. 567.

CHAPTER IV.

ESTOPPEL.

“THE King is not estopped by a recital in his patent, but the law shall adjudge him rather to be deceived.” (*Case of Alton Woods* (1600), 1 Rep. 40 b, 43 a.) This was approved in *Lord Sheffeld v. Ratchiffe* (1624), Hob. 334, 339, where it was said that “although fictions may take place among common persons, yet the King is not to be answered, bound, nor defeated by fictions . . . nor by estoppels, &c. of his own recitals *ex certa scientia*.”

In *Sir Edward Coke's Case* (1624), Godb. 289, 299, and in *R. v. Delme* (1714), 10 Mod. 199, 200, it was stated broadly that the Crown is not bound by estoppels. See also 10 Vin. Abr. Estoppel, E. 17, N. 3, and Bro. Abr. Estoppel, 206, “le roy ne sera conclude sil ad matter de luy server.” The case in Y. B. H. 3 Hen. IV. pl. 13, which is cited in Manning, Exch. Pr. (ed. 2) 106, n. (h), as against this, seems not to be in point.

It seems to follow from this that an estoppel does not operate against the King, even though it operates against the person through whom the King claims. (See Staundf. Praerog. 64 a, b.)

There was a suggestion, however, in *R. v. Board of Control, Lunatic Asylums* (1897), 31 I. L. T. R. 66, that a Public Department might be estopped.

But on the other hand, perhaps the King may take advantage of an estoppel, in spite of the general rule that estoppels must be reciprocal, on a similar principle to that enunciated above, p. 567. Thus, it is said in 2 Inst. 39, “The King, though he be not party to the record, yet shall he take advantage of the estoppel, for he is ever present in Court.” On the contrary, it was said in *Sir Michael Stanhope's Case* (1611), 10 Vin. Abr. Estoppel, N. 3: “If a man take a lease for years of his own land by the patent of the King, rendering rent, this shall not estop him as an indenture between common persons, because the King cannot be estopped by his patent; an estoppel ought to be of both parties.”

CHAPTER V.

LACHES.

Of the Crown and its Officers.

THE maxim "Nullum tempus occurrit regi" and its modifications by statute or prescription have already been discussed above, pp. 566 *sqq.* See also the chapter on Estoppel, above, p. 576. That laches in general cannot be imputed to the King seems clear from the authorities. Thus, in Co. Lit. 57 b, it is said: "Against the King there is no tenant at sufferance, but he that holdeth over in the cases abovesaid is an intruder upon the King, because there is no laches imputed to the King for not entring." The alleged reason was given in *Sir Edward Coke's Case* (1624), Godb. 289, 295: "Every thing for the benefit of the King shall be taken largely, as every thing against the King shall be taken strictly; and the reason why they shall be taken for his benefit is because the King cannot so nearly look to his particular, because he is intended to consider *ardua regni pro bono publico.*"

A series of cases in which the principle has been applied to different circumstances will be found in Bac. Abr. Prerog. E. 6.

On the same principle it is said in 5 Cruise, Dig. (ed. 4), p. 223, that the King could not be barred by a fine to which he was not a party, and the prerogative in this instance was not taken away by the Nullum Tempus Act; in West on Extents, pp. 29, 30, that if a bill, before it is due, is taken under an extent, and the party holding it on behalf of the Crown neglect to present it for payment in due time, the drawer and indorsers will continue liable; in *Knevit v. Taylor* (1587), 2 Leon. 110, and *R. v. Banks* (1705), 6 Mod. 245, that there could not be a trial by proviso in the King's case; in Manning, Exch. Pr. (ed. 2), p. 48, and cases there cited, that the King is not bound by a sale in market overt or by a custom of London to retain goods against the true owner; and in *L. A. v. Meiklam* (1860), 22 D. 1427, that the Crown could not be barred by *mora* or taciturnity from recovering certain legacy duty.

In *The Zoe* (1836), 11 P. D. 72; 55 L. J. P. 52, Butt, J., seemed to think that the Admiralty, proceeding in respect of naval stores, could be guilty of laches; but the point was neither argued nor decided.

Again, it was said in *Lord Sheffield v. Ratcliffe* (1624), Hob. 334, 347: "And this is just both for the King and the subject, that since the King's title was just and true, and ought by his officers to have been promoted and found in due time, which if it had been clear for him against the heir, as is confest, it is no reason that the negligence of his officers, and perhaps their compact and combination with the adverse party, should defeat the King. *Vigilantibus et non dormientibus jura subveniunt* is a rule for the subject; but *nullum tempus occurrit regi* is the King's plea, except it be in some trifle, as usurpation, or death upon his lapse or the like." This point, namely, that the Crown is not to be prejudiced by the neglect of its officers, is emphasised in *L. A. v. Miller's Trustees* (1884), 11 R. 1046, 1053, a claim for legacy duty, where Lord Fraser said: "It is the privilege of the Crown not to be bound by the omissions, neglects and blunders of their officers. It is needless to inquire what was the reason or origin of this privilege. It is perfectly established, and in reference to these legacy duties it is matter of daily practice to open up accounts that had been apparently settled with the Inland Revenue." He then cited *L. A. v. Meiklam*, *ubi sup.* The point was not argued in the Inner House. It was again very clearly put in *R. v. Renton* (1848), 2 Ex. 216; 17 L. J. Ex. 204, where Pollock, C.B., said: "Here the question involves this principle only, viz., that the Crown cannot be prejudiced by the misconduct or negligence of any of its officers, whether with respect to the rights of property or the right to the custody of the debtor till the debt is paid. . . . I have always understood it to be a maxim of the common law that the Crown cannot ever be prejudiced by the laches of any of its officers." *A.-G. v. Chitty* (1744), Park. 37, 48, and *Viscount Dunbarr's Case* (1634), Cro. Car. 349, were to the same effect. In *R. v. Fay* (1878), 4 L. R. Ir. 606, it was held that the Crown could not be affected by the alleged laches of its officers in failing to re-register a Crown bond.

In Relator Actions.

Whether the laches of a relator can be attributed to the Attorney-General, or whether he himself can be guilty of laches when he is suing with a relator on behalf of the public, has been discussed in several cases. The point was raised in *A.-G. v. Cleaver* (1811), 18 Ves. 211, but no decision was given by Lord Eldon, L.C., upon it. This feature of the case was referred to by Lord Eldon, L.C., in *A.-G. v. Johnson* (1819), 2 Wils. Ch. 87, 102, and he continued: "If the King's subjects have permitted the erection of a building which they were aware would, when completed, be a nuisance, without promptly

applying to the Court to prevent it, the Court would not consider them entitled to the extraordinary assistance of a Court of Equity, but leave them to their legal remedy." He does not appear, however, to have been directing his mind here to the Attorney-General at all, but merely to have been discussing the general principle on which laches would disentitle a subject to the assistance of a Court of Equity. In *A.-G. v. Sheffield Gas Consumers Co.* (1853), 3 D. M. & G. 304, 323; 22 L. J. Ch. 811, however, Turner, L.J., regarded him as having decided more than this, and, after saying that delay cannot be imputed to the relator plaintiffs individually, continued: "But with reference to this proceeding, so far as it is a proceeding by the Attorney-General, I do not concur in the argument urged on behalf of the plaintiffs, that there is no ground for imputing delay, or that delay can have no influence on such a question as the present. . . . That delay will affect the Attorney-General as much as a private individual I am not prepared to say; but, in my opinion, it is a circumstance to be considered in determining the question whether this Court shall interfere, although the application to the Court be on behalf of the Attorney-General, and I ground myself in that opinion upon what fell from Lord Eldon in the case of *A.-G. v. Johnson*. In that case Lord Eldon distinctly states his opinion to be that delay is to be considered in determining a question of injunction, though the application may be by the Attorney-General on behalf of the public. I think, therefore, that this case fails, so far as the public are concerned."

In *A.-G. v. Bradford Canal Co.* (1866), L. R. 2 Eq. 71; 35 L. J. Ch. 619, Page Wood, V.-C., said: "I do not doubt that there may be cases, such as Lord Eldon put in *A.-G. v. Johnson*, in which laches might be imputed to the public through the medium of the Attorney-General—cases of large expenditure incurred in buildings which are seen by the public, and are allowed to go on without the slightest complaint on the part of anyone. Of course, such cases as these might afford very good ground for saying that the public, like other people, should not allow that expenditure to be incurred, and then afterwards come forward and complain of rights which they might have asserted earlier. But the case here is of a totally different description." He then went on to point out that there are circumstances in which neither delay nor laches can be imputed to the Attorney-General, where it might have been imputed to an individual plaintiff. The matter arose also in *A.-G. v. Leeds Corporation* (1870), L. R. 5 Ch. 583; 39 L. J. Ch. 711, but no decision was given on the actual point.

Most of these cases were cited in *A.-G. v. Wimbledon House Estate Co., Ltd.*, [1904] 2 Ch. 34; 73 L. J. Ch. 593, but Farwell, J., found

it unnecessary on the facts to decide the point, though he said : "The Court, no doubt, has a discretion in the case of Attorney-General actions as well as other actions. It is not sufficient for the Attorney-General simply to come to the Court and say, 'I call attention to the fact that there has been a breach of this statute, and it follows as a matter of course that the mandatory injunction which I ask for must be granted.'"

In *A.-G. v. Scott*, [1905] 2 K. B. 160, 169; 74 L. J. K. B. 803, Jelf, J., did not decide the matter, but observed : "I incline to think, however, that the maxim, 'Nullum tempus occurrit regi,' prevents laches by itself being successfully set up against the Attorney-General, and the case of *A.-G. v. Sheffield Gas Consumers Co.* is not, when examined, an authority to the contrary."

Again, in *A.-G. v. Metcalf and Grieg*, [1907] 2 Ch. 23; 76 L. J. Ch. 259, the question was raised but not decided, Kekewich, J., observing : "I venture to submit that 'laches' is not the proper term to apply, but there is certainly room for argument that, though 'laches' is not applicable, the Attorney-General may be precluded from suing by reason of delay under such circumstances as to raise an equity in the defendant as against any person attempting to interfere with him. It is a grave question whether the Attorney-General is in any way bound by the doctrines of equity applicable to such a case." *Quære*, whether there is any substantial reason for objecting to the use of the term "laches" in this connection. There was no decision on the matter on appeal, [1908] 1 Ch. 372.

CHAPTER VI.

VENUE.

Right of the Crown to choose its Court.

THE Crown has an undoubted right to select the tribunal before which it will bring its suit. "Le roy sera respondu en quele place qil voet eslire sa suyte." (Y. B. 16 Edw. III. p. 31 (Rolls Series); so Y. B. 14—15 Edw. III. p. 95 (Rolls Series).) Accordingly, in Y. B. 15 Edw. III. p. 347 (Rolls Series), we find the King bringing a writ of contempt in the Common Bench against the Prior of Merton for not appearing to the King's suit in the King's Bench. See also *A.-G. v. Lade* (1745), Park. 57, 69; *R. v. Delme* (1714), 10 Mod. 199, 200. In *A.-G. v. London Corporation* (1848), 8 Beav. 270; 1 H. L. C. 440; 14 L. J. Ch. 305, it was said that the Crown might proceed in Chancery in respect of a legal right. See also *A.-G. v. Edmunds* (1868), L. R. 6 Eq. 381; 37 L. J. Ch. 706.

In *A.-G. v. Brown* (1818), 1 Swanst. 265; and *A.-G. v. Mid-Kent Rail. Co.* (1867), L. R. 3 Ch. 100, the question was raised, but not decided, whether the Attorney-General suing with a relator in a matter of public interest is entitled to elect in which Court he will sue. The question was raised again in *A.-G. v. Wilson*, [1901] W. N. 5; 70 L. J. Ch. 234. The defendants there sought to have the action transferred to the King's Bench Division, with a view to its being tried with a jury at Durham. The plaintiffs resisted the application on the ground, *inter alia*, that it interfered with the prerogative right of the Crown to select its own Court. Kekewich, J., did not decide the broad question of the prerogative, but thought that the Attorney-General had exercised his discretion, and that the case was not strong enough to cause him to interfere. On appeal, it was stated, by the authority of the Attorney-General, that, when granting his fiat, he had exercised no discretion as to the Division in which the action should be tried, but that the selection of the Court rested entirely with the relator plaintiffs. The Court, therefore, held that it was at liberty to treat the proceedings as an ordinary action, and made the order as prayed.

In *Clerk v. R.* (1861), 9 H. L. C. 184; 31 L. J. Q. B. 175, an information in the nature of a *quo warranto*, the venue was changed, and the question of prerogative was not, and probably could not be, raised.

In *Secretary of State for War v. Studdert* (1901), 1 I. R. 346, the defendants moved to transfer the action from the Chancery to the King's Bench Division, and their application was granted in the Court of first instance, though it was resisted by the Secretary of State on the ground that the Crown had the right to choose its Court. The Court of Appeal rather suggested that the prerogative right no longer applied as between two Divisions of a unified High Court, but allowed the appeal on the ground of convenience, without deciding the point.

It was held in Scotland, in *Somerville v. L. A.* (1893), 20 R. 1050, that no inferior Court in that country has jurisdiction over the Crown, unless the Crown has consented to submit to the jurisdiction of the particular Court.

Right of the Crown to lay and retain the Venue in any County.

This matter was fully discussed, with a citation of most of the early authorities, in *A.-G. v. Lord Churchill* (1841), 8 M. & W. 171; 10 L. J. Ex. 314. It was there held that in an information of intrusion the Crown had not the right, as of its prerogative, to lay the venue in any county, or to issue the *venire facias juratores* into a different county from that in which the venue was laid. The Court held that the early authorities established that the King might lay and retain his suit in what county he pleased in "personal" actions only (see, for instance, *R. v. Webb* (1670), 1 Sid. 412: "Roy aver prerogative a try ses personal actions lou il pleist"), and that personal actions meant actions for the recovery of debts or damages to the person or to personal effects, and that in this sense an information of intrusion was not a "personal action," although it was a "personal action" in another sense, as opposed to a real action, its essence being the recovery of damages and not the recovery of the estate, which the Crown, in contemplation of law, had never lost. This decision, therefore, did not follow the decision in *A.-G. v. Parsons* (1836), 2 M. & W. 23; 5 L. J. Ex. 243. The matter was again discussed, but not decided, in *A.-G. to the Prince of Wales v. Crossman* (1866), L. R. 1 Ex. 381; 35 L. J. Ex. 215, where the Court inclined to the opinion that the prerogative only extended to transitory actions. So it had been held in *A.-G. v. Browse* (1727), Bunb. 236, and in *A.-G. v. Hines* (1758), Park. 182, that an information under 12 Car. II. c. 32, might be laid in any county, because the offence

was transitory. So in an action for embezzling the King's goods. (*R. v. Webb* (1670), 1 Vent. 17.)

The Attorney-General of the Prince of Wales has, it would seem, the same rights as the King's Attorney-General in this behalf. (*A.-G. to the Prince of Wales v. Crossman*, *ubi sup.*)

Now, however, by virtue of sect. 46 of the Crown Suits, &c. Act, 1865 (printed below, p. 699), it would seem that the above principles must be taken to extend to all proceedings in the High Court in which the Crown's interest or profit is concerned, whether "personal" or not. That section provides that where a cause, in which the Attorney-General on behalf of the Crown is entitled to demand as of right a trial at bar, is at any time depending in the High Court, and the Attorney-General states to the Court that he waives his right to a trial at bar, the Court, on the application of the Attorney-General, shall change the venue to any county in which the Attorney-General elects to have the cause tried; and it provides the machinery to carry out these provisions. The section is discussed in *Dixon v. Farrer* (1886), 18 Q. B. D. 43; 56 L. J. Q. B. 53, and that case and the general question as to the circumstances under which the Crown is entitled to a trial at bar are discussed below, p. 587. See also Exchequer Rules, 1860, Sched. C., Form 4 (below, p. 796). In the case of petitions of right, however, the section must be read subject to what has been said as to change of venue in such proceedings (above, p. 382).

It is further specially provided by 21 Jac. I. c. 4, s. 1, that informations upon penal statutes shall be prosecuted in the counties where the offences were committed. (See *R. v. Gaul* (1698), 1 Salk. 372.) As to the venue in cases of offences under the Customs Consolidation Act, 1876, see sects. 229, 258 of that Act (below, pp. 719, 726); in cases of Post Office offences, see the Post Office (Offences) Act, 1837 (7 Will. IV. & 1 Vict. c. 36), ss. 37, 39.

By sect. 17 of the Queen's Remembrancer Act, 1859 (printed below, p. 678), suits and proceedings pending on the Revenue side of the King's Bench Division may be tried on circuit without any commission issued for the purpose.

The defendant to an *ex officio* information by the Attorney-General cannot obtain a change of venue without the Attorney-General's consent. (*A.-G. v. Smith* (1816), 2 Price, 113.)

Right of the Crown to transfer certain Proceedings to the Revenue Side of the King's Bench Division and to be Actor in such Proceedings.

The Court of Exchequer (now the Revenue side of the King's Bench Division) has always been the natural and proper tribunal for

the trial of suits touching the profit of the Crown, whether the Crown was originally a party or not. It follows from this that the Crown has the right to insist upon the removal to the Revenue side of the King's Bench Division of any case which touches its profit, unless it prefers to waive its right.

A number of the older cases are collected in Manning, Exch. Pr. (ed. 2), pp. 187—195. He divides them under two heads: (i.) Where any matter properly cognisable on the Revenue side of the Exchequer was drawn into question in an action brought in another Court. This branch of the matter is of much less importance since the fusion of the Courts by the Judicature Acts. (ii.) Where the matter of the suit in another Court touches the profit of the King. It is this branch with which we are now particularly concerned.

Petitions of right for the recovery of duties paid, intituled in the King's Bench Division, are always tried on the Revenue side as part of the Revenue paper. An action as to a demand of prisage of wine, the Crown having a reversionary interest in the prisage, was removed into the Exchequer (*Lamb v. Gunman* (1751), Park. 143); so were actions in respect of the seizure of ships. (*Pennington's Case* (1754), cited 1 Anst. 213, 214; *Bereholt v. Candy* (1718), Bunb. 34; *Adams v. Fremantle* (1848), 2 Ex. 453; 17 L. J. Ex. 312.) But it is said in a note to *Bereholt v. Candy*, that, after a verdict for the defendant on an information in the Exchequer, the Court would not order the removal of an action for the seizure subsequently brought in the Common Pleas. Actions against Revenue officers for the recovery of duties or for damages have been frequently removed. (*Cawthorne v. Campbell* (1790), 1 Anst. 205, n., where the matter is elaborately discussed; *Pennington's Case* (1754), 1 Anstr. 213, 214; *Penny v. Bailey* (1731), Bunb. 309, pl. 392; *Benningfield v. Stratford* (1820), 8 Price, 584; *In re Kingsman* (1814), 1 Price, 206; *A.-G. v. Kingston* (1841), 8 M. & W. 163; 11 L. J. Ex. 72; *Smith v. Cameron* (1845), 9 Jur. 405.) But it must appear that the King's profit is actually affected. (*Barkley v. Walters* (1731), Bunb. 306.) See also *R. v. Clace* (1769), 4 Burr. 2456, and *In re Lord Listowel's Fishery* (1875), Ir. R. 9 C. L. 46.

In *A.-G. v. Hullett* (1846), 15 M. & W. 97; 15 L. J. Ex. 246, an action of trespass *quare clausum fregit*, where the defendant justified the trespass as the servant of, and by command of, the Queen, the Court of Exchequer ordered the action to be removed thither from the Common Pleas (after a two days' notice to, and hearing counsel on behalf of, the plaintiff) by a rule absolute in the first instance, on the allegation of the Attorney-General that the profit of the Crown came in question in the case, the plaintiff being put in the same state of forwardness as he was in the Common Pleas. As

to preserving the action after removal at the stage which it had already reached, see also *Cawthorne v. Campbell* (1790), 1 Anst. 205, n.; *Lord Stanley of Alderley v. Wild & Son*, [1900] 1 Q. B. 256; 69 L. J. Q. B. 318.

The prerogative right is not affected by the County Courts Acts. (*Mountjoy v. Wood* (1856), 1 H. & N. 58, decided on 9 & 10 Vict. c. 95; compare *Lord Stanley of Alderley v. Wild & Son*, *ubi sup.*)

The Crown has the further right, when its title to property comes in question, to prevent the title from being decided in any suit between subjects, and is entitled to have it decided by a proceeding in which the Crown itself is actor (*A.-G. v. Barker* (1872), L. R. 7 Ex. 177; 41 L. J. Ex. 57), and this right has not been affected by the Judicature Acts. (*A.-G. v. Constable* (1879), 4 Ex. D. 172; 48 L. J. Ex. 455. The pleadings on this point will be found above, pp. 294, 296, 304.) The Crown then institutes proceedings by information on the Revenue side of the King's Bench Division, and obtains an order either removing the proceedings between subject and subject or merely staying them until the information has been heard and determined. It can do this at any stage of the latter proceedings, even after judgment. (*Yates v. Dryden* (1634), Cro. Car. 589; *Lord Stanley of Alderley v. Wild & Son*, *ubi sup.*)

Method of Application on behalf of the Crown.

In *Dixon v. Farrer* (1886), 18 Q. B. D. 43; 56 L. J. Q. B. 53, the Attorney-General moved the Divisional Court for a rule for a change of venue, stating that he waived his right to a trial at bar, under sect. 46 of the Crown Suits, &c. Act, 1865, and, after cause had been shown, the rule was made absolute. *Quære*, whether there should not have been a rule absolute in the first instance, after notice to the other side, as in *A.-G. v. Hallett* (1846), 15 M. & W. 97; 15 L. J. Ex. 246, which, however, was an application of a slightly different kind. The same course was pursued in *Adams v. Fremantle* (1848), 2 Ex. 453; 17 L. J. Ex. 312.

In the last-cited case the Court discussed the question whether the Attorney-General was bound to file an affidavit in support of his application, and, after the earlier cases had been examined, decided, on the authority of *Cawthorne v. Campbell* (1790), 1 Anst. 205, n., that he was not bound to file an affidavit. The general question of the privilege of the Attorney-General to suggest facts *ore tenus* without affidavit is discussed below, p. 594. See also the discussion as to the mode of application for a trial at bar, below, p. 588.

CHAPTER VII.

TRIAL.

"Le roy avera tiel jour come il voet" (Y. B. 12 & 13 Edw. III. p. 331 (Rolls Series)). This is repeated in Fitzh. Abr. Prerog. 17. "The Crown cannot be compelled to go to trial" (Manning, Exch. Pr (ed. 2), p. 120). On similar principles it was said in *R. v. Banks* (1715), 6 Mod. 245, 247: "There cannot be a trial by proviso in the King's case, because there can be no laches in the King"; compare *Knerit v. Taylor* (1587), 2 Leon. 110. But in *A.-G. v. Richards* (1796), 3 Anst. 753, an information of seizure, the defendant was granted a writ of delivery without security, the Attorney-General not showing cause against it, on the ground of the Crown's delay in proceeding. It is also said in Com. Dig. Praerog. D. 85, that after a distringas and jury returned upon it, the Attorney-General cannot, at his pleasure, stay trial, referring to *Luke's Case* (1590), 4 Leon. 32, where the point was raised, but not decided.

Ord. XXXVI. has no application to the Crown, except in so far as it applies to petition of right.

33 Hen. VIII. c. 39, s. 51, provides that any suit on behalf of the King for the recovery of the King's debt shall be preferred before the suit of any other person or persons.

The omnipresence of the King has already been noticed (pp. 9, 218, and see 2 Inst. 39). So, in *Barclay v. Russell* (1789), 2 Dick. 729, a motion that the Attorney-General might be directed to appear to the plaintiff's bill was refused, Lord Thurlow, L.C., saying that the Attorney-General, *qua* such (*sic*), was always supposed to be in Court, and, if he would not appear, it must be considered as a *nihil dicit*.

See further, as to proceedings on the Revenue side of the King's Bench Division, above, p. 218.

The Crown's right to begin and reply and other privileges are dealt with above, pp. 10 *sqq.*

CHAPTER VIII.

TRIAL AT BAR.

Right of the Crown to demand a Trial at Bar.

THE Attorney-General, suggesting that the Crown is interested in the result of a cause, may demand a trial at bar as a matter of right, the Court not having power to grant a writ of nisi prius where the King is a party, or where the matter touches the right of the King, without a special warrant from the King or the assent of the Attorney-General. (Fitzh. N. B. 241 a ; 2 Inst. 424 ; *Rowe v. Brenton* (1828), 8 B. & C. 737 ; 3 Man. & R. 133 ; 5 L. J. (O. S.) K. B. 137 ; *Paddock v. Forrester* (1840), 1 Man. & G. 583 ; 9 L. J. C. P. 342.) He may also demand a trial at bar as of right when the interests of the King as Duke of Lancaster are concerned. (*Brown v. Lord Granville* (1835), 1 Har. & W. 270.)

The Crown has exercised its right in cases of many kinds, both civil and criminal ; on a criminal information prosecuted by the Attorney-General (*R. v. Johnson* (1726), 1 Stra. 644 ; *R. v. Hales* (1728), 2 Stra. 816 ; 1 Barn. K. B. 88) ; in trials on indictment (*R. v. Castro* (1874), L. R. 9 Q. B. 350 ; 43 L. J. Q. B. 105, and cases there cited ; *R. v. Jameson*, [1896] 2 Q. B. 425 ; 65 L. J. M. C. 218) ; in an action against a colonial governor (*Lord Bellamont's Case* (1700), 2 Salk. 625) ; on an information of intrusion (*A.-G. v. Walsh* (1832), Hay. & Jon. 65) ; on an information for penalties (*A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667 ; 54 L. J. Q. B. 205) ; on a petition of right (*Baron de Bode's Case* (1845), 8 Q. B. 208, 242 ; *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391 ; 74 L. J. K. B. 753 ; see also above, p. 392) ; in an action against the Secretary of the Board of Trade under the Merchant Shipping Acts (*Dixon v. Farrer* (1886), 18 Q. B. D. 43 ; 56 L. J. Q. B. 53). *R. v. Lynch*, [1903] 1 K. B. 444 ; 72 L. J. K. B. 167, was a trial at the bar of the King's Bench Division under 35 Hen. VIII. c. 2, s. 1, for high treason committed abroad.

The nature of the Crown's interest which entitles it to a trial at bar was discussed in *Dixon v. Farrer*, *ubi sup.* Lord Esher, M.R., said : "It is obvious that if the property of the Crown, either in the personal capacity of the Sovereign or in the Sovereign's capacity as head of the State, is to be touched by the decision in the case, the

Crown is interested; but can the Crown be interested, although neither the personal property of the Sovereign nor the property of the Sovereign as head of the State is affected? On the one side it is urged that the Crown cannot be interested unless one of those two things is made out, and on the other side it is said that the Crown is interested if an executive officer of the Government acting for the executive, and therefore for the Sovereign, is charged with maladministration in his official capacity, that is, as servant of the Crown." He then concluded that this latter contention was right, and that in such a case the Crown had sufficient interest.

The Court relies on the Attorney-General's discretion in exercising his right. (*A.-G. v. Walsh* (1832), Hay. & Jon. 65; *Butler v. Lord Mountgarrett* (1855), 7 Ir. Jur. (O. S.) 149.) The right of the Attorney-General is not affected by the Judicature Acts. (*Dixon v. Farrer* (1886), 18 Q. B. D. 43; 56 L. J. Q. B. 53.)

Where the Attorney-General refuses to interfere, the Court may still make an order for a trial at bar on the application of one of the parties, if it thinks fit. (*Anderson v. Gorrie* (1891), 10 T. L. R. 383.) In *Sir Samuel Astrey's Case* (1701), 2 Salk. 651; 6 Mod. 123, the Court said that "a trial at bar was never denied to any officer of the Court, nor hardly to any gentleman at the bar," and granted one on the application of an officer of the Court, who was defendant to a *scire facias*, in spite of the disapproval of the Attorney-General.

Method of Application on behalf of the Crown.

The whole matter was examined in *Dixon v. Farrer* (1886), 18 Q. B. D. 43; 56 L. J. Q. B. 53. Lord Esher, M.R., said: "It was suggested at one time that if the Attorney-General stated that the Crown was interested, the Court was bound to make the rule absolute in the first instance, and that such order could not afterwards be questioned. It was afterwards, however, suggested that, though the statement of the Attorney-General is accepted in the first instance, a party to the action could come before the Court, and, the burden of proof being upon him, if he could show that the Attorney-General had been misinformed, and had misinformed the Court, as to the Court being interested, the Court would set aside the rule absolute which it had made; and I think that is the true state of the case. Looking at the report of *Rowe v. Brenton* (1828), 8 B. & C. 737; 3 Man. & R. 1:3; 5 L. J. (O. S.) K. B. 137, in Concanen's report of that case, the first decision, as I understand it, was that upon the mere statement of the Attorney-General, coming *ex officio* before the Court, that the Crown was interested, although the cause was appa-

rently between private individuals, the Court made the rule absolute for a trial at bar. Then Mr. Brougham endeavoured to set aside that rule on the ground that the Crown was not interested, and he certainly was admitted to be heard on that question. It turned out that upon his own affidavits it appeared that the Crown was interested, though not directly, and thereupon the rule absolute was maintained. That case of itself would not show that the Court can set aside the rule absolute, because, as the affidavits showed that there was an interest in the Crown, it was not necessary to determine the point; but in *Paddock v. Forrester* (1840), 1 Man. & G. 583; 9 L. J. C. P. 342, we have the authority of Tindal, C.J., that the Attorney-General had a right to demand on the part of the Crown a trial at bar, but he added that it was "for the plaintiff to show the Court that it is misinformed upon the case, if that is the fact." I think that is an authority for the proposition that the Attorney-General is entitled to a rule in the first instance upon his statement that the Crown is interested, but that it is open to the party who objects to that order to show that, in point of fact, the Court is misinformed on this point, and unless he can show this the rule would stand." See also Lindley, L.J., and Lopes, L.J. This view is embodied in the Crown Office Rules, 1906, Rule 151, below.

It is clear from the above decisions and from *Adams v. Fremantle* (1848), 2 Ex. 453, 454, per Parke, B., that the Attorney-General makes his application *ex parte* without affidavit, merely suggesting *ore tenus* that the Crown is interested. (See further *R. v. Hayes* (1801), Rowe, 565, 566; and below, p. 595.)

The application is made to a Divisional Court, but it does not appear to be essential that the Attorney-General should make the application in person. In *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391; 74 L. J. K. B. 753, the application was made by the author; but in that case the Crown was actually a party, so there was no doubt of its interest. Where the Crown's interest did not appear upon the face of the proceedings, probably the Court would be right in not receiving a suggestion, without affidavit, that the Crown was interested except from the Attorney-General or Solicitor-General.

Practice.

This is governed in part by the Crown Office Rules, 1906, Rules 150—155, which are as follows:—

150. A trial at bar shall not be had except by order of the Court.

151. An application for a trial at bar shall be by motion for an order nisi, except when made by the Attorney-General on behalf of

the Crown, when the order shall be absolute in [the] first instance as of course.

152. On making the order absolute for a trial at bar, the Court may impose such terms on the applicant as to payment of costs, or otherwise, as the Court may think fit.

[NOTE.—This will not apply where the applicant is the Attorney-General.]

153. The Court may direct the jury to be summoned from the county in which the offence was committed, or from any other county not exempt by law at any time after joinder of issue. The order for the jury shall be lodged with the sheriff of such county in sufficient time for the jury to be summoned six days before the trial.

[NOTE.—18 Eliz. c. 5, s. 2, provides that no jury shall be compelled to appear at Westminster for the trial of any issue in an informer's suit on a penal law for any offence committed more than thirty miles from Westminster, except where the Attorney-General, for some reasonable cause in that behalf to be showed, requires the same to be tried at bar at Westminster, which request is to be noted on the back side of the writ of *distringas* thereupon awarded, to the end the sheriff or his bailiff may signify the same to the jury that are in such case impanelled. See also Short and Mellor, *Crown Office Practice*, pp. 309, 310.]

154. Three copies of the roll upon which the trial is to take place shall be delivered by the applicant for the trial at bar at the Crown Office for the use of the judges four days before the day fixed for the trial.

155. A trial at bar may be continued, *de die in diem*, or adjourned to a subsequent day at any time, in the discretion of the Court, without any reference to the sittings of the High Court, and no formal order shall be drawn up for any such continued sitting or adjournment, nor shall any such order be entered on the roll.

[NOTE.—See also the Supreme Court of Judicature Act, 1873, s. 26; and for the old law *R. v. Castro* (1874), L. R. 9 Q. B. 350; 43 L. J. Q. B. 105.]

The trial is in charge of the Crown Office Department, except on the Revenue side of the King's Bench Division (see above, p. 232), and is usually before three judges and a special jury. There was no jury in *West Rand Gold Mining Co. v. R.*, [1905] 1 K. B. 383; 74 L. J. K. B. 753.

Judgments on points of law are given in the ordinary way by the judges *seriatim*. The senior judge sums up the evidence to the jury, but it is said that each judge has the right to do so separately, as in the *Case of the Seven Bishops* (1688), 12 St. Tr. 183, 478; see *Rowe*

v. *Brenton* (1828), 3 Man. & R. 133, 364. The senior puisne judge passes sentence, as in *R. v. Lynch*, [1903] 1 K. B. 444; 72 L. J. K. B. 167; but in *R. v. Jameson*, [1896] 2 Q. B. 425; 65 L. J. M. C. 218, sentence was pronounced by the Lord Chief Justice.

With regard to appeals, it was held in *A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667; 54 L. J. Q. B. 205, that an appeal lies to the Court of Appeal from any order or judgment made or given by the King's Bench Division either during, or afterwards with respect to, a trial at bar in a civil proceeding, and whether or not the appeal is brought from a decision upon a motion for a new trial on the ground of misdirection or wrongful reception of evidence; but the appeal must be brought on by notice of motion, an *ex parte* application for a rule nisi to the Court of Appeal being irregular.

CHAPTER IX.

EVIDENCE.

The Sovereign as a Witness.

THERE is no record of the appearance of the Sovereign as a witness. Lord Campbell (*Lives of the Chancellors*, II. 511) opines that he, if so pleased, might be examined as a witness in any case, civil or criminal, but must be sworn, although there would be no temporal sanction to the oath, citing 2 Roll. Abr. 686. But it is not easy to see on what principle the Court could compel the Sovereign to be sworn as the condition of giving evidence, any more than it could compel him to come and give evidence. There would, of course, be no temporal sanction to the oath, as the Sovereign could not commit or be charged with perjury. The passage cited from Rolfe runs: "Semble que le roy ne poet estre un testimonie en un cause per son letters desouth son signett manuell." But, in fact, in *Lord Abingye v. Lord Clifton*, Hob. 213, the King by his letters under his sign manual certified to the Lord Chancellor the manner and substance of a promise made by the King, which was in question in the action, "which certificate was allowed upon the hearing for a proof without exception for so much." So in *Sir Henry Lea and Henry Lea's Case* (1613), Godb. 198, we find: "Upon a certificate made by the King's Majestie, that he had made such a promise unto him, the Court of Requests made the said decree, which certificate was mentioned in the body of the said decree." Compare *Mark Steward's Case* (1579), 9 Rep. 99 b, 102 a, b. On the other hand, in *Omichund v. Barker* (1745), Willes, 538, 550, Willes, C.J., said: "Even the certificate of the King under his sign manual of a matter of fact (except in one old case in Chancery, Hob. 213) has been always refused." See also the *Berkeley Peerage Case* (1891), *Times News*, June 27. These contradictory authorities would at most exclude a written certificate of the King, and this does not seem logical in view of the fact that a sign manual of the King's intention to pardon has been received in evidence in criminal cases (*R. v. Miller* (1771), 1 Leach, 74; *R. v. Gully* (1773), 1 Leach, 98), and that the certificates of Secretaries of State are received in evidence for certain purposes (see below, p. 593). Anyhow, there is nothing in the authorities to show that the Court ought not to accept the personal

evidence of the Sovereign, not under oath, in the witness box. The matter was discussed in the *Earl of Bristol's Case* (1626), Lord Campbell's *Lives of the Chancellors*, II. 510, where the Earl, who had been impeached, wished to call the King as a witness to communications which had passed between them before the King's accession. Coventry, L.K., gave it as his opinion that the Sovereign cannot be examined in any judicial proceeding under an oath or without an oath, as he is the fountain of justice, and, since no wrong may be imputed to him, the evidence would be without temporal sanction. It is difficult to follow the Lord Keeper's logic. The judges were consulted (i.) whether in case of treason or felony the King's testimony was to be admitted or not; (ii.) "whether words spoken to the Prince, who is after King, makes any alteration in this case," but they were informed by the King, through the Attorney-General, that, "not being able to discern the consequence which might happen to the prejudice of his Crown from these general questions, his pleasure was that they should forbear to give an answer thereto."

Lord Campbell, *loc. cit.*, further states that there was an intention of calling the Prince Regent as a witness in the *Berkeley Peerage Case* (1811), and that the general opinion was that he might have been examined, but not without being sworn. He, however, was not at the time the Sovereign. In the *Berkeley Peerage Case* (1891), *Times News*. June 27, a letter of the Prince Regent was rejected as being the letter of a dead private person, and the House of Lords did not decide the question whether the statement of the Sovereign could be taken with or without oath.

Certificates of Secretaries of State on behalf of the Crown.

In *Mighell v. Sultan of Johore*, [1894] 1 Q. B. 149; 63 L. J. Q. B. 593, the status of the defendant being in question, the judge communicated with the Colonial Office and received a reply, purporting to be written on behalf of the Secretary of State, and stating that the defendant was the sovereign of an independent state. Of this Lord Esher, M.R., said: "I think the letter has the same effect, for the present purpose, as a communication from the Queen When once there is the authoritative certificate of the Queen, through her Minister of State, as to the status of another sovereign, that, in the Courts of this country, is decisive. Therefore this letter is conclusive that the defendant is an independent sovereign." The judgment of Kay, L.J., contains a passage to the same effect.

So in *Taylor v. Barclay* (1828), 2 Sim. 213; 7 L. J. (O. S.) Ch. 65, the Court applied to the Foreign Office and obtained information

that the "Federal Republic of Central America" was not a sovereign and independent State recognised by England, as alleged in the bill. The widespread inquiries made by Sir R. Phillimore in *The Charkieh* (1873), L. R. 4 A. & E. 59; 42 L. J. Adm. 17, in addition to information given to him by the Foreign Office, by which he decided that the Khedive of Egypt was not entitled to the privilege of a sovereign prince, were disapproved by Lord Esher, M.R., in *Mighell v. Sultan of Johore*, *ubi sup.*

In *Carr v. Francis Times & Co.*, [1902] A. C. 176; 71 L. J. K. B. 361, a Foreign Office certificate was obtained by the defendant as to the status of the Sultan of Muscat, and in *Francis Times & Co. v. Mead* (1902), not reported, as to the status of the Sheikh of Bahrein. In *The Jassy*, [1906] P. 270; 75 L. J. P. 93, the Foreign Office verified and forwarded to the registrar, for the information of the Court, a certificate from a foreign Government to the effect that a vessel was a public vessel of that Government.

The same principle was applied to the boundaries of foreign states in *Foster v. Globe Venture Syndicate, Ltd.*, [1900] 1 Ch. 811; 69 L. J. Ch. 365, where Farwell, J., held that the Court took judicial cognisance thereof, and, if in doubt, would apply to the Secretary of State for Foreign Affairs, whose reply would be conclusive.

The certificate of the Secretary of State for India, that a person was authorised to administer oaths in India, was accepted as evidence in Ireland, in *Ferguson v. Benyon* (1867), Ir. R. 1 Eq. 475; 16 W. R. 71.

Under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 90), s. 4, if in any proceedings a question arises as to the existence or extent of any jurisdiction of the Crown in a foreign country, a Secretary of State shall, on the application of the Court, send to the Court, within a reasonable time, his decision on the question, and his decision is final for the purpose of the proceedings. The Court is to send questions framed so as properly to raise the question, and sufficient answers are to be returned by the Secretary of State, which are to be conclusive evidence of the matters therein contained.

Suggestions, not on Oath, by the Attorney-General.

In *Doe d. Legh v. Roe* (1841), 8 M. & W. 579; 11 L. J. Ex. 57, the Attorney-General filed affidavits in support of an application for a rule to show cause why the proceedings should not be stayed in an action of ejectment, on the ground that the property, which it was sought to recover, was Crown property. Lord Abinger, C.B., is said to have stated (at p. 583, n.) that he was much disposed to think that no affidavit was necessary in support of such an application, but that

it was sufficient that it was made by the Attorney-General appearing on behalf of the Crown.

So in *A.-G. v. Hallett* (1846), 15 M. & W. 97; 15 L. J. Ex. 246, the Attorney-General applied without affidavit to move a cause into the Exchequer.

In an application for a mandamus to examine witnesses on an information by the Attorney-General, the rule was granted without affidavit on the statement of the Attorney-General that it was necessary that the writ should issue (*R. v. Douglas* (1842), 2 Dowl. (N. S.) 416).

In an application for a trial at bar, a suggestion *ore tenus* by the Attorney-General that the Crown is interested is sufficient (*Rowe v. Brenton* (1828), 3 Man. & R. 133; *Paddock v. Forrester* (1840), 1 Man. & G. 583; 9 L. J. C. P. 342), see the discussion above, p. 588; as it is also in an application to remove a cause to the Revenue side of the King's Bench Division (*Adams v. Fremantle* (1848), 2 Ex. 453; 17 L. J. Ex. 312), see above, p. 585.

It was said by Wills, J., in *Hennessy v. Wright* (1888), 21 Q. B. D. 509; 57 L. J. Q. B. 530, that, where a claim is made to privilege for official documents, "a statement in Court on his behalf by the Attorney-General has sometimes been accepted as equivalent to the oath of the Secretary of State, a point upon which I express no opinion." (See further as to this below, p. 604.)

It would seem that statements *ore tenus*, such as those referred to, should only be accepted by the Court from the Attorney-General himself or the Solicitor-General, unless the accuracy of the suggestion appeared on the face of the proceedings. (See what is said above, p. 589.)

Judicial Notice of the Prerogative of the Crown.

In *Elderton's Case* (1703), 2 Ld. Raym. 978, 980, Hale, C.J., speaking of the Court of King's Bench, said: "We are indeed bound to take notice of everything that belongs to the Queen's privilege." The question there was the privilege claimed in respect of a royal residence, into which the Court would naturally not enquire with unseemly nicety (*Winter v. Miles* (1809), 10 East, 578), except in such exceptional cases as that of Hampton Court Palace (*R. v. Ponsonby* (1842), 3 Q. B. 14; 11 L. J. M. C. 65; *A.-G. v. Dakin* (1870), L. R. 4 H. L. 338; 39 L. J. Ex. 113). These were all cases arising out of execution or distress, from which land or goods in the possession of the King are exempt (Bro. Abr. Distresse, pl. 27, 47, 77; *Wicks & Dennis' Case* (1589), 1 Leon. 190). There is a full discussion of the matter in *Gibbons v. Moran* (1838), 6 Ir. Law

Rec. (N. S.) 141; *Craw. & D. Abr. C.* 197. Goods of the Crown on land of a subject are similarly privileged (*Secretary of State for War v. Wynne*, [1905] 2 K. B. 845; 75 L. J. K. B. 25). On the other hand, it was said in *Attorney-General to the Prince of Wales v. Crossman* (1866), 4 H. & C. 568, 575; 35 L. J. Ex. 215: "We are agreed that it is for the officers of the Crown to make out clearly the prerogative in any case where they claim to be on a different footing from the subject as regards procedure in any litigation. This was in effect laid down in the case before referred to, namely, *A.-G. v. Lord Churchill* (1841), 8 M. & W. 171; 10 L. J. Ex. 314."

Lord Ellenborough, C.J., refused to take judicial notice of a Royal proclamation, the "Gazette" not being produced, in *Van Omeron v. Dowick* (1809), 2 Camp. 42.

In *Whaley v. Carlisle* (1866), 17 Ir. C. L. R. 792, the Court thought it could take judicial notice of the fact that a certain person was Foreign Secretary in 1803.

Government Officials as Witnesses.

The Home Secretary was called as a witness by the plaintiff in *Irwin v. Grey* (1862), 3 F. & F. 635, he being himself the defendant, and questioned as to the advice which he had given to the Queen with regard to granting the fiat to a petition of right. The question was answered, but the Court on a motion for a new trial said that the advice which he had given ought not to have been divulged. (Compare *Marbury v. Madison* (1803), 1 Cranch (U. S.), 137, 144.)

Subpœnas have been frequently served on Board of Trade and other officials, particularly in actions arising out of accidents, where such officials have held inquiries. The matter has been discussed in Scotland in the reported case of *Gibson v. Caledonian Rail. Co.* (1896), 33 S. L. R. 638, an action for personal injuries, where the pursuer proposed to call a Board of Trade inspector, and to examine him as to a report which he had made on the accident. Counsel for the Board of Trade appeared and objected, and the presiding judge said: "No unfailing rule can be laid down, but I think it is desirable, in the larger interests of the public, that the officers of a public Department like the Board of Trade should be able to keep themselves entirely free from even the suspicion of partisanship, and preserve as far as possible their semi-judicial character. I can imagine cases where it might be necessary to examine them owing to there being a difficulty in getting the same kind of evidence from others, but unless strong reason were shown for it I should always (speaking for myself) be adverse to the

examination of such officers as witnesses." The same result was arrived at in *Freeth v. Highland Rail. Co.*, not reported.

In the earlier case of *Hubback v. North British Rail. Co.* (1864), 2 M. 1291, a Government inspector was called and examined without any question being raised. With regard to the impropriety, in general, of calling anyone who has acted in a "semi-judicial character," see *Broder v. Saillard* (1876), 24 W. R. 456.

The Local Government Board issued instructions to their inspector, who was subpoenaed by the plaintiffs in *A.-G. v. Nottingham Corporation*, [1904] 1 Ch. 673; 73 L. J. Ch. 512, and these are printed in the report in 2 L. G. R. 698. They were—(i) that he was to claim, subject to the directions of the Court, to confine his evidence to statements of actual fact, and to refuse to answer questions directed to eliciting his opinion upon any of the points involved; (ii) that he was to claim, subject to the direction of the Court, that his report was a privileged document, and that it was made solely for the information of the Board in the discharge of their duties, and he was to state that he was instructed by the Board to object to its production on the ground that such production would be prejudicial and injurious to the public service of His Majesty. The President of the Local Government Board also forwarded by the witness a letter claiming privilege for the report on the above grounds. The Judge protested against these instructions, in the face of which he felt that he could not put pressure upon the witness, and thought that the Board ought to have given him more assistance.

The position of the Director of Public Prosecutions as a witness was discussed in *Marks v. Beyfus* (1890), 25 Q. B. D. 494; 59 L. J. Q. B. 479. It was held by the Court that, if called as a witness at a trial on a prosecution instituted or carried on by him or during any proceedings arising out of such trial, he is entitled to refuse to disclose the names of the persons from whom he received information, and the nature of the information received, unless upon the trial of a prisoner the Judge is of opinion that such a disclosure is necessary *in favorem innocentie*. This is in accordance with the cases there cited as to the non-disclosure of the names of informants in Crown prosecutions and revenue informations.

A colonial Attorney-General was held not to be bound to answer questions as to communications between himself and the Governor of the Colony (defendant in the action) (*Wyatt v. Gore* (1816), Holt, N. P. 299); but where directions from a colonial Governor (defendant in the action) to a military officer could not be read, on the principles stated below, p. 600, it was held that the latter could be

asked whether he did not act under the directions of the former. (*Cooke v. Maxwell* (1817), 2 Stark. N. P. 183.)

In *Lee qui tam v. Birrell* (1813), 3 Camp. 337, it was held that a collector of property tax was bound, when subpœnaed as a witness, not only to produce the book required, but also to answer all questions respecting the collection of the tax, in spite of the oath administered to him, when he entered on his office, not to disclose anything he should learn respecting the property tax, except with the consent of the Commissioners or by force of an Act of Parliament. *Sed quære*. This case was followed in Newfoundland in the matter of the disclosure of a telegraphic message in *In re Waddell* (1862), 8 Jur. (N. S.) News. 181.

In *R. v. Watson* (1817), 2 Stark. N. P. 116, 148, a clerk of the works in the Ordnance Department was called to prove whether a certain plan was a plan of a part of the interior of the Tower of London, but when he was asked in cross-examination whether another plan, produced on behalf of the prisoner, was a correct plan of the Tower, the Court held that it might be attended with public mischief to allow an officer of the Tower to be examined as to the accuracy of such a plan.

The position of Government officials who are subpœnaed to produce documents is dealt with below, p. 605.

The Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), s. 29, provides specially that neither the Secretary of State nor the chief executive authority, as defined by sect. 26 of the Act, shall be examinable as a witness, except at his own request, in any Court of Justice in respect of the circumstances which led to the issue of a warrant under the Act.

Discovery.

The General Prerogative of the Crown.

At common law the Crown and Departments of the Government cannot be compelled to give discovery. (*Thomas v. R.* (1874), L. R. 10 Q. B. 44; 44 L. J. Q. B. 17; compare *The Helvetia*, [1879] W. N. 48.) The former case was discussed in the Court of Appeal in *Tomline v. R.* (1879), 4 Ex. D. 252; 48 L. J. Ex. 453, where the privilege of the Crown with regard to discovery seems to have been regarded as resting rather on technical difficulties than on a distinct prerogative. If this be so, it would appear that a Government Department, when party to legal proceedings, might have an order for discovery made against it, which could be complied with by the head of the Department. But, on the other hand, it would be always open to him to claim privilege for the public documents in his custody, as

explained below, p. 600. The Crown's privilege, however, whatever it may be based upon, does not preclude the Crown or a Government Department from obtaining discovery from the other party to the proceedings. (*Tomline v. R.*, *ubi sup.*)

In *A.-G. v. Brooksbank* (1827), 1 Y. & J. 439; 2 Y. & J. 37, the Court of Exchequer in Equity went so far as to stay an information by the Attorney-General against a public accountant till the Secretary at War produced certain documents, as prayed by the defendant.

In *Deare v. A.-G.* (1835), 1 Y. & C. 197, a cross-bill by a public accountant against the Attorney-General and the Secretary of State for War in the Exchequer in Equity praying, amongst other things, discovery, Lyndhurst, C.B., said (at p. 208): "I am not prepared to say that a bill of discovery has ever been filed, or could upon principle be sustained, against the Attorney-General for a discovery of matters that can be neither in his personal nor official knowledge, or that the Crown would be bound, through the medium of the Attorney-General, to make that discovery. At the same time, it has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of any proceeding for the purpose of bringing matters before a Court of Justice, where any real point of difficulty that requires judicial decision has occurred. . . . It was very clear, when once the Court thought that it ought to have jurisdiction over the subject-matter, that it did not become the Attorney-General to urge any form in opposition to it; otherwise, I think it would be a difficult thing to say that a mere bill of discovery might be filed against the Attorney-General, instead of putting the party to his petition of right, which is the proper remedy against the Crown, where he claims a specific relief against the Crown."

A much more definite statement was made by Rigby, L.J., in *A.-G. v. Newcastle-upon-Tyne Corporation*, [1897] 2 Q. B. 384, 395; 66 L. J. Q. B. 593: "The law is that the Crown is entitled to full discovery, and that the subject as against the Crown is not. That is a prerogative of the Crown, part of the law of England, and we must administer it as we find it. . . . Now I know that there has always been the utmost care to give to a defendant that discovery, which the Crown would have been compelled to give if in the position of a subject, unless there be some plain overruling principle of public interest concerned which cannot be disregarded. Then there is no hardship." Perhaps the last sentences are too broad in their terms.

In Chancery, Lord Cottenham, L.C., in *A.-G. v. London Corporation* (1850), 2 Mac. & G. 247, 259; 19 L. J. Ch. 314, said: "Nor am I at all aware of there being any different rule, as far as discovery is concerned, applicable to a suit between the Crown and a subject,

and a suit between ordinary parties." On the other hand, in *A.-G. v. Clapham* (1853), 10 Hare, App. II. lxviii, lxx, a charity information with a relator, Page Wood, V.-C., said: "It would have been improper, attending to the position of the Attorney-General, that there should be any rule requiring him to produce documents in his possession or power."

In an action by an alleged next of kin against the Treasury Solicitor to recover an estate, it was held that the defendant was not bound to make an affidavit of documents till a *prima facie* case had been made by the plaintiff. (*Lane v. Gray* (1873), L. R. 16 Eq. 552; 43 L. J. Ch. 187.)

As to discovery in proceedings by English information, see above, p. 249.

In proceedings under the Charitable Trusts (Recovery) Act, 1891 (54 & 55 Vict. c. 17), orders for the production of documents or other discovery against the Charity Commissioners are to be made against their secretary (above, p. 94).

The King's Proctor, when intervening in matrimonial proceedings, does not give discovery on oath, but provides the other side with a list of the documents which he thinks fit to disclose.

The Privilege attaching to Government Documents.

General Observations.—The grounds on which this privilege is held to exist were well stated in *Hennessy v. Wright* (1888), 21 Q. B. D. 509, 512; 57 L. J. Q. B. 530, 533, per Field, J.: "There are two aspects of the question. First, the publication of a State document may involve danger to the nation. If the confidential communications made by servants of the Crown to each other, by superiors to inferiors, or by inferiors to superiors, in the discharge of their duty to the Crown, were liable to be made public in a Court of Justice at the instance of any suitor who thought proper to say, 'fiat justitia, ruat cælum,' an order for discovery might involve the country in a war. Secondly, the publication of a State document may be injurious to servants of the Crown as individuals. There would be an end of all freedom in their official communications, if they knew that any suitor, that, as in this case, any one of their own body whom circumstances had made a suitor, could legally insist that any official communication, of no matter how secret a character, should be produced openly in a Court of justice." He then pointed out that the fact that a servant of the Crown, who was himself a party to the communications in question, was plaintiff in the action made no difference to the principle. Vaughan Williams, L.J., however, in *In re Joseph Hargreaves, Ltd.*, [1900] 1 Ch. 347; 69 L. J. Ch. 183, said: "It is plain

that the rules which would guide the Court as to what affidavit ought to be made by a defendant representing a Department of the State are entirely different from the rules which would be applied in a case in which the officer of a Department was merely subpoenaed as a witness. The officer of the Department is merely the custodian of the documents as the servant of the Department, and the Department have not in the present case put forward their servant in the sense of representing them."

The privilege has been successfully claimed in respect of many sorts of documents. It will be observed that in almost all the cases the documents passed between one officer of the Government and another; but in *Latter v. Goolden* (1894), not reported, as appears from the transcript of the shorthand notes, which the author has perused, the privilege was extended to a written character sent to the Mint authorities, and in *In re Joseph Hargreaves, Ltd.*, [1900] 1 Ch. 347; 69 L. J. Ch. 183, to a company's return made to a surveyor of taxes. *Blake v. Pilfold* (1832), 1 Moo. & R. 198, where privilege from disclosure was held not to attach to a letter of complaint written by a private individual (defendant in the action) to the Postmaster-General with regard to one of his subordinates, may, perhaps, be taken to rest upon the basis that the claim was made by one of the parties and not by one of the heads of the Department concerned; but the words of the judgment seem scarcely to be explicable in this way. In *Harrison v. Bush* (1855), 5 E. & B. 344; 25 L. J. Q. B. 25, a *bonâ fide* communication by a private individual (defendant in the action) to the Home Secretary, stating grounds why the plaintiff should be removed from the commission of the peace, was held to be privileged, although it is the Lord Chancellor and not the Home Secretary who has the actual power of removing justices. Several other cases of a similar kind are there cited. See also *Gould v. Hulme* (1829), 3 C. & P. 625, and *Henwood v. Harrison* (1872), L. R. 7 C. P. 606; 41 L. J. C. P. 206.

A general rule with regard to the production of documents in the custody of officers of the Crown was laid down in Ireland in the *Petition of the A.-G.* (1842), 5 Ir. L. R. 185.

Particular instances of Government Documents for which the Privilege has been claimed.—Communications of the Colonial Secretary and a special commissioner appointed to inquire into the affairs of a colony with the governor of the colony (plaintiff in the action) (*Hennessy v. Wright* (1888), 21 Q. B. D. 509; 57 L. J. Q. B. 530); documents belonging to a colonial government in the hands of its agent-general (defendant in the action) (*Wright & Co. v. Mills* (1890), 62 L. T. 558); directions from a colonial governor (defendant in the action) to a military officer acting under his authority (*Cooke v. Maxwell*

(1817), 2 Stark. N. P. 183); communications between the Colonial Secretary and the governor of a dependency (defendant in the action) (*Anderson v. Hamilton* (1816), 2 B. & B. 156, n.); a communication from a member of the executive government of a dependency to the colonial secretary of the dependency (*Stace v. Griffith* (1869), L. R. 2 P. C. 420; 6 Moo. P. C. (N. S.) 18).

The report from the president of a military inquiry (defendant in the action) to the Commander-in-Chief (*Home v. Bentinck* (1820), 2 B. & B. 130); letters written by the plaintiff in the action to the Secretary of State for War and the minutes of a military inquiry (*Beatson v. Skene* (1860), 5 H. & N. 838; 29 L. J. Ex. 430); evidence given by the defendant at a military inquiry and forming part of the minutes (*Dawkins v. Lord Rokeby* (1875), L. R. 7 H. L. 744; 45 L. J. Q. B. 8); a report by a volunteer officer to his superior officer (*Ford v. Blest* (1890), 6 T. L. R. 295).

The report from the commanding officer of a Queen's ship to the Admiralty with regard to a collision, in a cause of damage against such ship. (*H.M.S. Bellerophon* (1874), 44 L. J. Adm. 5.) But it should be observed that discovery is obtainable against a commanding officer of a King's ship sued in respect of a collision, and must be given by him so far as the documents are not claimed to be privileged as public documents by the Admiralty. In the case just cited an order was made for discovery of the log-books, for which no such privilege was claimed, and the Admiralty is in the habit of disclosing without objection, the log-books of the ship concerned.

A communication from the Secretary of State for India (defendant in the action) to the Parliamentary Under-Secretary. (*Chatterton v. Secretary of State for India in Council*, [1895] 2 Q. B. 189; 64 L. J. Q. B. 676.) So, in the days of the East India Company, correspondence between the Court of Directors and the Commissioners for the affairs of India (*Smith v. East India Co.* (1841), 1 Ph. 50; 11 L. J. Ch. 71); documents belonging to the Company and relating to its political duties (*Wadeer v. East India Co.* (1856), 8 D. M. & G. 182; *s. n. Rajah of Coorg v. East India Co.*, 25 L. J. Ch. 345). Compare *Reiner v. Marquis of Salisbury* (1876), 2 Ch. D. 378, where a bill for discovery against the Secretary of State for India was refused on a different ground.

In *A.-G. v. Nottingham Corporation*, [1904] 1 Ch. 673; 73 L. J. Ch. 512, as reported in 2 L. G. R. 698 (see, more fully, above, p. 597), the Local Government Board successfully claimed privilege for their inspector's report on the hospital which was in question in the action, though Farwell, J., expressed a protest at the course pursued by them. Board of Trade documents were regarded as privileged in

Kain v. Farrer (1877), 37 L. T. 469, though the affidavit claiming privilege in that case was thought to be insufficient by the Court.

A report by the chief cashier in the Inland Revenue Department (defendant in the action) to the Accountant-General (*Hughes v. Vargas* (1893), 9 R. 661); a communication from a collector of Customs (defendant in the action) to the Customs Commissioners (*Black v. Holmes* (1822), Fox & S. 28); balance-sheets of a company delivered to a surveyor of taxes for the purpose of assessment of income tax (*In re Joseph Hargreaves, Ltd.*, [1900] 1 Ch. 347; 69 L. J. Ch. 183); a written character sent to the authorities at the Mint (*Latter v. Goolden* (1894), not reported). But in *Lee qui tam v. Birrell* (1813), 3 Camp. 337, a collector of property tax was ordered to produce a book under his control. (See above, p. 598.)

A report made by an Inspector-General of Prisons, Ireland (defendant in the action) to the Lord-Lieutenant. (*M'Elveney v. Connellan* (1864), 17 Ir. C. L. R. 55.)

Telegrams are not privileged (*Williamson v. Freer* (1874), L. R. 9 C. P. 393; 43 L. J. C. P. 161), and the Post Office authorities may be ordered to produce specified telegrams. (*In re Smith* (1881), 7 L. R. Ir. 286; *Harwich Election Petition* (1880), 44 L. T. 187, and cases there cited; *Coventry Election Petition, Ince's Case* (1869), 20 L. T. 421.)

The Bank of England was held to be exempted from production of their books in *Heslop v. Bank of England* (1833), 6 Sim. 192.

The privileged communications in question are not only privileged from production, but also from being regarded as libellous. (*Chatterton v. Secretary of State for India in Council*, [1895] 2 Q. B. 189; 64 L. J. Q. B. 676; *Home v. Bentinck* (1820), 2 B. & B. 130; *Dawkins v. Lord Rokeby* (1875), L. R. 7 H. L. 744; 45 L. J. Q. B. 8); except where there is actual malice (*Dickson v. Earl of Wilton* (1859), 1 F. & F. 419). In *Grant v. Secretary of State for India in Council* (1877), 2 C. P. D. 445; 48 L. J. C. P. 681, the insertion of a notice in the "Gazette" was held to be an official act under the authority of the Crown, for which the defendant could not be responsible in an action for libel.

Secondary Evidence of the Contents of Privileged Government Documents.—Where a public document is held to be privileged, it follows that no secondary evidence can be given of its contents. Thus, in *Stace v. Griffith* (1869), L. R. 2 P. C. 420, 427, the Board said: "If the judge was of opinion that the defendant's note was an official communication, which, on public grounds, ought not to be disclosed, no evidence could have been given of the contents of it." See also *Hughes v. Vargas* (1893), 9 R. 661; the Pennsylvania cases of *Gray*

v. *Pentland* (1815), 2 Serg. & Raw. 23; *Yoter v. Sanno* (1837), 6 Watts, 164, 166; and Greenleaf on Evidence, par. 251. But in *Cooke v. Maxwell* (1817), 2 Stark. N. P. 183, the recipient of written instructions, which were held to be privileged, was permitted to be asked whether he did not act under the directions of the writer.

Method of claiming the Privilege.—The method, which is usually adopted at the present day, is the production of an affidavit by one of the head officials of the Department in question, generally the permanent head of the Department, claiming privilege on the grounds which have been already noticed. A form of such an affidavit is printed below, p. 635. See also the form printed in the report of *H.M.S. Bellerophon* (1874), 44 L. J. Adm. 5. Where the Government Department is not directly concerned in the proceedings and the privilege is claimed, under direction of the Department concerned, by one of the parties to the proceedings, who has been ordered to give discovery, affidavits will be sworn by the party and a head official of the Department, in the forms printed below, pp. 635, 637. This course was pursued in *Lloyd's v. Marconi International Marine Communication Co., Ltd.* (1905), not reported. The defendants consented to accept the sufficiency of the privilege claimed, and that the order for discovery should contain a recital to that effect, the Attorney-General being given notice of the drawing up of the order, so that the Treasury Solicitor could see that it contained a proper recital.

The necessary contents of the affidavit were discussed in *Kain v. Farrer* (1877), 37 L. T. 469, where it was said that it was not enough to state, in a mere formal affidavit, that discovery was objected to on the ground of public policy, but that it ought to appear that the mind of a responsible person has been brought to bear on the question of the expediency in the public interest of giving or refusing the information asked for. A further affidavit was ordered. However, in *Latter v. Goolden* (1894), not reported, it appears from the transcript of the shorthand notes, which the author has perused, that the head of the Department, who appeared in person to claim privilege, did not fulfil the purpose for which he was called, and allege, as he was expected to do, that the production of the document (a written character) would be contrary to public policy, but merely said that it was a confidential document. The Court, nevertheless, allowed the claim of privilege.

In *Hennessy v. Wright* (1888), 21 Q. B. D. 509; 57 L. J. Q. B. 530, the party from whom discovery was sought made an affidavit to the effect that the head of the Department directed him to refuse discovery of certain documents, but the latter made no affidavit. This, as Wills, J., pointed out very strongly, was not at all the right

course, and the mere statement in the plaintiff's affidavit was not sufficient to support the claim of privilege. Such a course ought not to be adopted except under very special circumstances. So, in *Thompson v. Farrer* (1882), 9 Q. B. D. 372; 51 L. J. Q. B. 534, not reported on this point, Lord Coleridge, C.J., insisted on an affidavit from the President of the Board of Trade. (See *Williams & Bruce*, Adm. Pr. (ed. 3), 415.)

When, however, a Government official is subpoenaed to produce certain documents, the Department which claims privilege may dispense with an affidavit, and deliver written instructions from the head of the Department to the witness, ordering him to claim privilege, as in *A.-G. v. Nottingham Corporation*, [1904] 1 Ch. 673; 73 L. J. Ch. 512; see the report in 2 L. G. R. 698. These instructions, proved by the witness on oath, then take the place of an affidavit.

There is now, in most cases, no necessity that the responsible head, or one of the heads, of the Department should attend in person to claim the privilege, though this course has often been pursued. See, for instance, *H.M.S. Flamer* (1895), *Williams & Bruce*, Adm. Pr. (ed. 3), 415; *Hughes v. Vargas* (1893), 9 T. L. R. 471, 551; *Latter v. Goolden* (1894), not reported. The matter was summed up by Wright, J., in *In re Joseph Hargreaves, Ltd.*, [1900] 1 Ch. 347; 69 L. J. Ch. 183: "I do not say that there may not be cases—I think there may probably be cases—in which it would be right for the Court to insist upon the responsible public officer, or on some responsible officer of the public Department, coming forward and stating to the Court in an authoritative manner that, in the opinion of those best qualified to judge, or whose business it is to judge, the production of the document might be prejudicial to the public service. But the current of authority is that that is not essential." (See also *Williams v. Star Newspaper Co., Ltd.* (1908), 24 T. L. R. 297.)

It may, however, be desirable to pursue this course if the Department desires that there should be no question about the right of privilege, since the Courts have suggested that, where a subordinate officer attends with the papers, with instructions to object to production, the judge may be entitled, and ought, to enquire whether the production would really be contrary to public policy. (*Beatson v. Skene* (1860), 5 H. & N. 838; 29 L. J. Ex. 630; *Dickson v. Earl of Wilton* (1859), 1 F. & F. 419; *Dawkins v. Lord Rokeby* (1875), L. R. 7 H. L. 744; 45 L. J. Q. B. 8. But see above, p. 597.)

But it is apprehended that where the subordinate so attending was provided with definite instructions from the head of the Department not to produce the papers, or an affidavit from such head that production would be contrary to public policy, the judge would not

feel himself entitled to decide on the matter by an inspection of the documents. (See *A.-G. v. Nottingham Corporation* (1904), 2 L. G. R. 698.) It will be safer, however, not to send the documents to Court with the witness, but to keep them at the Department till the judge calls for them.

When the head of the Department has decided, it is not for the judge to say whether the production of any particular document is injurious to the public service or not. (*Beatson v. Skene* (1860), 5 H. & N. 838; 29 L. J. Ex. 430; *H.M.S. Bellerophon* (1874), 44 L. J. Adm. 5; *Hughes v. Vargas* (1893), 9 R. 661; *Williams v. Star Newspaper Co.* (1908), 24 T. L. R. 297.) But it was said by Wills, J., in *Hennessy v. Wright* (1888), 21 Q. B. D. 509, 520, 521; 57 L. J. Q. B. 530, relying on *Dawkins v. Lord Rokeby* (1875), L. R. 7 H. L. 744; 45 L. J. Q. B. 8; and *Home v. Bentinck* (1820), 2 B. & B. 130, that, even if no objection is taken, it is the duty of the judge to prevent the disclosure of documents or information, if it is apparent to him that such disclosure is contrary to public policy.

Discovery by a Foreign Sovereign.

A foreign sovereign or sovereign State suing in the Courts of this country is subject to the control of the Court in which he or it sues and to its rules of practice, and is, therefore, bound to give discovery under oath. He or it is not, however, bound to join as co-plaintiff some officer who can give such discovery; but, if an application for discovery is made by the defendant, the Court will stay the proceedings until the plaintiff sovereign or State gives satisfactory means of discovery. (*Prioleau v. United States* (1866), L. R. 2 Eq. 659; 36 L. J. Ch. 36; *United States of America v. Wagner* (1867), L. R. 2 Ch. 582; 36 L. J. Ch. 624; *Republic of Liberia v. Imperial Bank* (1874), L. R. 16 Eq. 179; L. R. 9 Ch. 569; 42 L. J. Ch. 574; 43 L. J. Ch. 640; *Republic of Peru v. Weguelin* (1875), L. R. 20 Eq. 140; 44 L. J. Ch. 583; *Republic of Costa Rica v. Erlanger* (1875), 1 Ch. D. 171; 45 L. J. Ch. 145; *South African Republic v. Compagnie Franco-Belge du Chemin de Fer du Nord*, [1898] 1 Ch. 190; 67 L. J. Ch. 92.)

CHAPTER X.

UNDERTAKING IN DAMAGES.

THIS matter may now be regarded as settled by *A.-G. v. Albany Hotel Co.*, [1896] 2 Ch. 696; 65 L. J. Ch. 885. In that case the earlier cases, reported and not reported, were discussed, and it was held that, in granting an interlocutory injunction at the instance of the Attorney-General on behalf of the Crown, the Court will not, as a general rule, require the Attorney-General to give the usual undertaking in damages. The only distinct authority to the contrary, *Secretary of State for War v. Chubb* (1880), 43 L. T. 83, was distinguished by Lopes, L.J., on the ground that the Secretary of State, and not the Crown by the Attorney-General, was the plaintiff upon the record, but this seems not to be a valid distinction for this purpose, and that case must be taken to have been overruled. No arguments are given in the report of it, and Jessel, M.R., is reported as merely saying that he could see no reason for making an exception in favour of the Crown in a matter of common and universal justice. But North, J., in *A.-G. v. Albany Hotel Co.*, *ubi sup.*, had the transcript of the shorthand note before him, and he also was unable to understand the grounds of the decision. The curious way in which this invalid decision has been applied in Ireland is noticed at p. 616, below.

CHAPTER XI.

APPEAL.

As to stay of execution in proceedings on the Revenue side of the King's Bench Division, see above, p. 214 (Law), and p. 246 (Equity).

The Crown, on the general principles applicable to Crown costs, will not give security for costs of an appeal either to the Court of Appeal or the House of Lords. See below, p. 613, and especially *Lord Advocate v. Lord Dunglas* (1842), 9 Cl. & F. 173.

But even in proceedings where the Crown pays and receives costs, as on a petition of right (see above, p. 397), or where a Government Department is liable to pay and entitled to receive costs, it is apprehended that the Court would not order them to give security for the costs of an appeal. The other party needs no such protection in such a case.

Reference may also be made to certain cases in the Privy Council. In *A.-G. of Isle of Man v. Cowley* (1858), 12 Moo. P. C. 27, the Board held that the Attorney-General need not enter into a recognisance to answer the costs of the appeal. The same decision was arrived at, in the case of a defendant who by statute represented the Government of a colony, in *Robertson v. Dumaresq* (1864), 2 Moo. P. C. (N. S.) 66; so in *In re Attorney-General for Victoria* (1866), 3 Moo. P. C. (N. S.) 527.

The time for appealing to the Privy Council has been held to be no longer in the case of the Crown than in that of a subject. (*Laing v. Ingham* (1839), 3 Moo. P. C. 26.) But *quære* whether this principle would be strictly enforced where matters of public importance were involved, if the Crown made proper provision for an indemnity in the matter of costs to the other party.

Occasionally the Court of Appeal has asked the Crown to join itself as a party, where it was of opinion that such a course was advisable or necessary.

As to appeals by the Crown on costs alone, see below, p. 616.

With regard to appeal on a trial at bar, see *A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 667; 54 L. J. Q. B. 205, above, p. 591.

It is stated in Manning, Exch. Pr. (ed. 2), p. 128, that on a judgment in favour of the Crown on a traverse of inquisition, no writ of error could be brought without the consent of the Crown or the Attorney-General, which would not be refused if any point really arguable could be raised. *Sed quære*, whether this is still so in the case of an appeal, if the view expressed above, p. 429, is correct, namely, that the proceedings in traverse are exactly the same as any other proceedings on the trial of an issue in the King's Bench Division. See also above, p. 214.

CHAPTER XII.

THIRD PARTY PROCEDURE.

Errington v. A.-G. (1731), Bunb. 303, was a bill of interpleader against the Attorney-General and others in the Exchequer, where the Crown put in an answer, and later an amended answer, and in *Reid v. Stearn* (1860), 1 L. T. 539, a bill was filed praying that the Crown, together with other defendants, might be decreed to interplead, the fund in question being, it was suggested, the property of a deceased felon. Counsel for the Crown submitted that there was no precedent for the Crown being called upon to interplead (being unaware, apparently, of the case in *Bunbury*), but Stuart, V.-C., said that "he conceived, if the Crown was adversely claiming against the stakeholders, that they had a right, when other persons were claiming the same money, to file a bill of interpleader, and to make the Crown a defendant to the bill, because the Crown was one of the parties who were vexing them by contesting the right. . . . There must be a decree that the Crown and the railway company shall interplead." It is not easy to understand this decision, inasmuch as the Interpleader Act, 1831 (1 & 2 Will. IV. c. 58), which regulated interpleader proceedings before the Judicature Acts, clearly did not bind the Crown. In *Candy v. Maugham* (1843), 6 Man. & G. 710; 15 L. J. C. P. 17, which was not cited to the Court in *Reid v. Stearn*, *ubi sup.*, where, pending an action, an immediate extent in chief was issued against the plaintiffs, under which the debt which formed the subject matter of the action was seized to the use of the Crown, and notice was subsequently given to the defendant by the Board of Customs requiring him to pay the debt to the Crown, the Court refused to grant an interpleader rule under the statute calling upon the Board of Customs and the plaintiffs to interplead, on the ground that the statute showed that the Crown could not be made a party to interpleader proceedings, and that the defendants were seeking to induce the Court indirectly to call upon the Crown to appear before it.

This decision seems to have been perfectly right, and it is equally applicable to Ord. LVII., which now governs interpleader proceedings, and which does not bind the Crown any more than the statute did.

It has been followed in several cases in Chambers within the author's knowledge.

In *In re Commissioners of Her Majesty's Works and Public Buildings, Garston and Davis*, not reported, the Commissioners waived such rights as the Crown had *pro illa vice*, and took out an interpleader summons.

Ord. XLV., which concerns the attachment of debts, does not bind the Crown, and so garnishee orders nisi against Government Departments have from time to time been discharged with costs, as in *Higgins v. Bussy* (1899), not reported, against the Controller of the Stationery Office, in *Broadbent v. Saunders* (1899), not reported, against the Admiralty in the person of their Director of Works, and in *Bennett v. Taverner* (1902), not reported, against the Secretary of State for War.

In *Tiano v. Rousseau and Truman* (1902), not reported, an interim injunction was obtained *ex parte* to restrain Truman, who was Inspector-General of Remounts, from paying to the other defendant money alleged to be due to the plaintiff, but, on an application to continue the injunction, the action was dismissed against Truman with costs, on an affidavit proving the position held by him under the War Office.

It would seem that the National Debt Commissioners can be garnished in respect of an annuity charged on the Consolidated Fund, which they must be regarded as having contracted to pay. In *Mann v. Poppleton* (1892), not reported, in the City of London Court, they paid the registrar the amount of the instalment claimed by the judgment creditor.

Neither the full pay (*Apthorpe v. Apthorpe* (1887), 12 P. D. 192), half-pay (*Flarty v. Odum* (1790), 3 T. R. 681), retired pay (*Crowe v. Price* (1889), 22 Q. B. D. 429; 58 L. J. Q. B. 215), or pension (*Lucas v. Harris* (1886), 18 Q. B. D. 127; 56 L. J. Q. B. 15; *Quin v. O'Keeffe* (1860), 10 Ir. Ch. R. 151, 262), of an officer in the army or navy can be attached for debt; but an officer may be committed in default of payment of instalments of a judgment debt, even though the only income, of which he is proved to be in receipt, is his pay as such officer (*Hamilton & Co. v. Coningham*, [1903] 2 I. R. 564).

It is stated by Chitty, Prerog. 361, citing Staundf. Praerog. c. 19, that where there are various conflicting claims the Crown has the prerogative power of deferring the establishment of its title till the parties have interpleaded among each other, when perhaps the Crown's claim may be rendered more evident. See also Jacob's Law Dict. s. v. Enterpleader. This principle seems to have applied chiefly where offices in different counties had found a title in different persons. In *Manning*, Exch. Pr. (ed. 2), 93, 94, it is said that "if two persons claim the same property, and the title of the Crown is weak, it seems

that there ought to be judgment *quod partes interplacitent*, however numerous they may be," and again, "not only is the King entitled to judgment whenever a title for him appears upon a record between other parties, but the Attorney-General may elicit a title for the King by interposing to take an issue" (see, as to this, *Willion v. Berkley* (1562), Plowd. 223, 243), and again (p. 126), "the King shall have execution where his title appears of record in pleadings between two subjects, although he be not party to the suit. If a presumption of title only appears for the Crown, the Court will in some places proceed to give judgment in the action, but will suspend execution until the party has interpleaded with the King." See the ancient authorities cited by him.

Mention may be made here of a case *in pari materia*, *In re Manor of Lowestoft and Great Eastern Railway Co.* (1883), 24 Ch. D. 253; 52 L. J. Ch. 912. An adverse claim having been made by the Crown and an information filed with respect to land acquired by a railway company, the company paid the purchase money into Court. The vendor petitioned for payment out, but the Court ordered the petition to stand over till the information had been heard, on the ground that "it is well known that you cannot by any process under the Lands Clauses Consolidation Act bring the Crown into Court as a litigant to contest any claim before the Court."

CHAPTER XIII.

COSTS.

General Observations.

Crown Costs at Common Law.

AT common law (the practice in equity is discussed below, p. 621) the King and any person suing to his use (a phrase which does not include relators) neither pays nor receives costs; "for besides that he is not included under the general words of these statutes [*i.e.*, statutes as to costs], as it is his prerogative not to pay them to a subject, so it is beneath his dignity to receive them" (3 Bla. Comm. 400). Blackstone adds that it seems reasonable to suppose that the Queen Consort participates in the same privilege. (See above, p. 7.)

In *L. A. v. Hamilton* (1852), 1 Macq. 46, 55, Lord Brougham observed: "I am exceedingly sorry that, according to an inflexible rule, we cannot give costs as against the Crown." And in *L. A. v. Lord Dunglas* (1842), 9 Cl. & F. 173, 212, Lord Cottenham said: "The Attorney-General in this country, and the Lord Advocate in Scotland, equally represent the Crown, and are not liable for costs." In *Smith v. Earl of Stair* (1849), 2 H. L. C. 807, 809, Lord Brougham remarked: "The Crown would not have to pay the costs here; if so, then it cannot get them; the right to costs must be mutual." The principle has been always recognised, and an interesting discussion of it will be found in *The Leda* (1863), Br. & L. 19; 32 L. J. P. 58. See also Lord Mansfield, C.J., in *R. v. Wilkes* (1770), 4 Burr. 2527, 2568. It was held to apply even where the Crown instituted a suit substantially for the benefit of another, if such other person was not a relator. (*R. v. Corum* (1782), 1 Anst. 50.)

The principle applies to Government Departments and the heads of such Departments, in so far as they sue or are sued by virtue of any statutory provision which does not specifically provide for payment or receipt of costs by them.

The question of costs in each of such cases will be found in the article on each Department in Book I. of this work. It was suggested by the Court in *R. v. Archbishop of Canterbury*, [1902] 2 K. B. 503, 572; 71 L. J. K. B. 932, that, "as incidental to departmental

administration, there must often be litigation which does not directly affect any prerogative of the Crown, and as to which no good reason can be assigned for the denial of costs to the successful party." But *quære*, whether this can be so apart from express statutory provision, where the Department, or the head thereof, is a party as such. (See further *Thomas v. Pritchard*, [1903] 1 K. B. 209; 72 L. J. K. B. 23, where the above passage is cited.)

The Judicature Acts and Rules do not enable the Court or a judge to order costs to be paid by persons who before the Acts came into operation could not have been ordered to pay them. (*In re Wood's Estate* (1886), 31 Ch. D. 607; 55 L. J. Ch. 488; *In re Mills' Estate* (1886), 34 Ch. D. 24; 56 L. J. Ch. 60; and see now the Supreme Court of Judicature Act, 1890 (53 & 54 Vict. c. 44), s. 5.)

So the Petitions of Right Act, 1860, s. 7 (below, p. 687), though it applies the current practice as to security for costs to proceedings by petition of right, only operates to enable an order for security for costs to be made against the suppliant; it does not render the Crown liable to give such security. (*Tomline v. R.* (1879), 4 Ex. D. 252, 254; 48 L. J. Ex. 453.) It appears, therefore, from the last cited cases that security for the costs of discovery, under Ord. XXXI. rr. 25, 26, 27, would not be ordered against the Crown.

Crown Costs under the Crown Suits Act, 1855.

The common law principle above enunciated has been modified by several statutes, which are noticed below under their appropriate heads. The chief and most comprehensive of them is the Crown Suits Act, 1855, which is printed below, p. 673.

This statute provides for the payment of costs to and by the Crown, as in proceedings between subject and subject, in all informations, actions, suits and other legal proceedings to be thereafter instituted before any Court or tribunal whatever in Great Britain and Ireland by or on behalf of the Crown in respect of any hereditaments or goods and chattels, the proceeds or rents and profits of which are to be carried to the Consolidated Fund, or in respect of any money due to the Crown by virtue of any vote of Parliament for the service of the Crown, or any Act relating to the public revenue, such costs to be recoverable by the Attorney-General or Lord Advocate on behalf of the Crown. It was extended to the Isle of Man by the Crown Suits (Isle of Man) Act, 1862 (25 & 26 Vict. c. 14), s. 1.

The Act is not drawn with very remarkable skill, but its effect was defined in *R. v. Beadle* (1857), 7 E. & B. 492; 26 L. J. M. C. 111, where the Court held that it only applied to proceedings taken by the Attorney-General or Lord Advocate on behalf of the Crown to

recover lands, goods or money as therein mentioned. It was held not to apply to charity informations by the Attorney-General in *A.-G. v. Dean and Canons of Windsor* (1860), 8 H. L. C. 369, 459; 30 L. J. Ch. 529. See also *A.-G. v. Earl of Chesterfield* (1854), 18 Jur. 686; and *A.-G. v. Grainger* (1859), 7 W. R. 684. In *The Leda* (1863), Br. & L. 19; 32 L. J. P. 58, which was a cause of damage instituted on behalf of Her late Majesty in her Office of Admiralty, and the commander and crew of one of her ships, Dr. Lushington followed *R. v. Beadle*, and refused costs against the Crown, though he condemned the Crown's co-plaintiffs in costs. A similar course was followed in *In re Galvin*, [1897] 1 I. R. 520; [1898] W. N. 140, where Boyd, J., held that costs could only be given where the Attorney-General was a party *eo nomine*; and in *Secretary of State for War v. Booth*, [1901] 2 I. R. 692, where the Secretary of State for War sued on behalf of the Crown in respect of certain lands vested in him. In *In re Vernon's Estate*, [1901] 1 I. R. 1, where the Board of Trade appeared on behalf of the Crown, in *In re Madden's Estate*, [1902] 1 I. R. 63, where the Commissioners of Woods and Forests appeared as respondents, and in *R. (Postmaster-General) v. Great Northern Rail. Co.*, [1908] 2 I. R. 32, the Court held that the Crown is not liable to pay costs under the Act of 1855, unless the action or proceeding by or on behalf of the Crown is taken in the name of the Attorney-General. The decision to the contrary effect in *In re Dublin, Wicklow and Wexford Rail. Co., E. p. Jordan* (1892), 31 L. R. Ir. 1, must now be regarded as overruled.

Estimation of the Amount of Crown Costs.

The Crown, where it recovers costs, will be entitled to full costs as between subject and subject, although the solicitor acting for the Crown receives a fixed salary for his services; and it is impossible to calculate how much of such salary is to be allocated to the labour of the particular suit (*A.-G. v. Shillibeer* (1849), 4 Ex. 606; 19 L. J. Ex. 115; *Azimulla Saheb v. Secretary of State for India* (1892), I. L. R. 15 Mad. 405; affirmed *s. n. Muhammed Alim Oollah Sahib v. Secretary of State for India* (1893), I. L. R. 17 Mad. 162); and the same principle has been applied in Scotland to the costs of a Law Officer remunerated by the Crown by a yearly salary. (*L. A. v. Stewart* (1899), 36 S. L. R. 945.)

That the Treasury Solicitor is entitled to recover his costs as a duly qualified solicitor, where he is acting for a subject by direction of the Crown, appears from *R. v. Archbishop of Canterbury*, [1903] 1 K. B. 289; 72 L. J. K. B. 188. (See above, p. 18.)

It has been held in Scotland that the Crown is subject to the same rules as a private individual as regards the number of counsel whose

fees will be allowed on taxation. (*Ordnance Officers v. Edinburgh Magistrates* (1860), 22 D. 446.) See further the article on Chancery costs, below, p. 624.

Fees payable to a Public Department out of public money may be remitted by direction of the Treasury (Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 31).

Appeals by the Crown as to Costs.

The Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49, which provides that no order of the High Court, or any Judge thereof, as to costs only which by law are left to the discretion of the Court, is subject to appeal, except by leave of the Court or Judge making the order, does not bind the Crown; and it has been held that an appeal may be brought against any judgment awarding costs against an officer of the Crown suing on behalf of the Crown.

Whether the House of Lords would entertain an appeal by the Crown as to costs only, *quære*. (See *Caledonian Rail. Co. v. Barrie*, [1903] A. C. 126.)

Imposition of Terms as to Costs on the Crown.

In *R. v. Abbott*, [1897] 2 I. R. 362, 425, the Court showed an inclination, when the Crown, as appellant, had been granted by the Court what it described as a favour, to grant the successful respondent the costs of the appeal, and the Crown did not contend that he should not have them.

In *In re Madden's Estate*, [1902] 1 I. R. 63, where the Crown appeared, in accordance with the usual practice, by the Commissioners of Woods and Forests, the Court thought that the proper form of claiming the lands in question would have been by a proceeding in the name of the Attorney-General, in which case the Crown would have been liable to pay costs under the Crown Suits Act, 1855, and suggested that, in a future case of a similar kind, the Crown, if appearing again in such a way as not to render itself liable to pay costs, should be put on terms to abide the costs. But in *In re Gardiner's Estate* (1903), 37 I. L. T. R. 164, the Court put the Crown on terms as suggested in the last-cited case, and it was held on appeal that the Court had no jurisdiction to impose any such terms, *In re Madden's Estate* being distinguished on the ground that in the case before the Court the Landed Estates Court (Ireland) Act, 1858 (21 & 22 Vict. c. 72), s. 62, applied, and the Crown was entitled to appear by the Commissioners.

The imposition of terms in the above cases was suggested by *Secretary of State for War v. Chubb* (1880), 43 L. T. 83, where Jessel, M.R., insisted upon the plaintiff giving the usual undertaking

in damages on a grant of an interim injunction. The real effect of this case is explained in *A.-G. v. Albany Hotel Co.*, [1896] 2 Ch. 696; 65 L. J. Ch. 885 (see above, p. 607), to which the attention of the Irish Courts was not called; but, quite apart from this, it does not seem reasonable or proper that, in a case where the Crown has a legal option of proceeding in a particular way, the Court should endeavour to exercise a jurisdiction to restrain it from so proceeding, by imposing such terms as to costs as would make the method of procedure selected by the Crown equivalent to another method, which the Crown has deliberately refrained from adopting.

The House of Lords.

In the House of Lords, the general principle that, apart from statute, the Crown neither receives nor pays costs has been fully adopted. (*L. A. v. Lord Dunglas* (1842), 9 Cl. & F. 173, 212; *Smith v. Earl of Stair* (1849), 2 H. L. C. 807, 809; *L. A. v. Hamilton* (1852), 1 Macq. 46, 55, all cited more fully on p. 613, above.) The principle extends to all appeals whether from England, Scotland, or Ireland. In *Mews v. R.* (1882), 8 A. C. 339, 353; 52 L. J. M. C. 57 (mandamus proceedings), an order was made against the Attorney-General on behalf of the Crown to pay the costs; but later a memorandum was made by Lord Blackburn, who had presided, to the effect that the point had not been raised, and that the case was not to be taken as a precedent. The principle that no costs were receivable or payable by the Crown in such proceedings was accepted by both sides in *Middlesex JJ. v. R.* (1884), 9 A. C. 757, 786; 53 L. J. Q. B. 505.

The Judicial Committee of the Privy Council.

The whole question of Crown costs was elaborately discussed in *Johnson v. R.*, [1904] A. C. 817; 73 L. J. P. C. 113; and the Board, considering that, though the Crown had often been treated by the tribunal like a private litigant in the matter of costs, the point had never been argued, pointed out that all such cases fell under three heads—(i) where the Crown was treated as an ordinary litigant under the provisions of local statutes; (ii) where the proceedings were by petition of right or something analogous thereto; (iii) exceptional cases, where justice seemed to require that the Crown should pay costs, or where the Crown was not unwilling to be treated as an ordinary litigant. They therefore thought they ought to adhere to the practice of the House of Lords, and that in future the rule should be that the Crown neither receives nor pays costs, unless the case is governed by some local statute, or there are exceptional circumstances justifying a departure from the ordinary rule.

The Revenue Side of the King's Bench Division.

The provisions of the Crown Suits Act, 1855, which apply to proceedings by the Attorney-General as therein mentioned, have already been stated and discussed above, p. 614.

The Queen's Remembrancer Act, 1859, s. 21 (p. 679), more specifically provides that the costs of all suits, informations and other proceedings, and of any interlocutory matter or proceeding, on the Revenue side of the King's Bench Division, whether at law or in equity, may be awarded by the Court or a judge between the Crown and subject on the same principle as between subject and subject, but in accordance with any rules and orders in that behalf.

Ord. LXVIII. r. 2, applies Ord. LXV., which relates to costs, to proceedings on the Revenue side of the King's Bench Division, but Ord. LXV. rr. 6, 6a, and 7, which govern security for costs, could not conceivably apply to suits by the Crown (see above, p. 614).

Suits upon obligations or specialties made to the King or to his use are dealt with by 33 Hen. VIII. c. 39, s. 36 (p. 652), which provides that in such cases the King shall have and recover his just debts, costs and damages like other (*sic*) common persons.

Under the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 50, which provides for appeals (see above, p. 67) and gives the Court power to determine the matter of the appeal and the costs thereof, it was held in *In re Micklethwait* (1855), 11 Ex. 452; 25 L. J. Ex. 19, that a successful petitioner could be awarded costs against the Crown.

The Probate Duty Act, 1861 (24 & 25 Vict. c. 92), s. 1, which provides for the enforcing of payment of succession and legacy duties, and the payment of costs in such proceedings by or to the Crown, was repealed as to England by the Crown Suits, &c. Act, 1865, s. 53, and Sched. III. (below, pp. 702, 707).

The Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 13, gives the Court, on appeals from the assessment of the Commissioners, power to give the successful appellant costs if it thinks fit, and to order an unsuccessful appellant to pay the Commissioners' costs.

The Customs, Inland Revenue and Savings Bank Act, 1877 (40 & 41 Vict. c. 13), s. 5, provides that in all informations, prosecutions, suits or proceedings at the suit of the Crown under the Customs Acts the same rule as to costs shall be observed as in suits and proceedings between subject and subject, and by sect. 220 of the Customs Consolidation Act, 1876 (printed below, p. 717), on the conviction of a person and his commitment in default of the payment of a penalty and costs under the Customs Acts, the costs awarded to be paid by

him as well as the penalty are to be stated in the conviction and commitment. See also *A.-G. v. Mann* (1748), Park. 91, where it was held that the Attorney-General and the Customs officer were both entitled to costs under a repealed Act of Anne.

For Scotland, the Exchequer Court (Scotland) Act, 1856 (19 & 20 Vict. c. 56), s. 24, provides for the award of costs to and against the Crown in any civil Court in any proceedings by or against the Crown. (See *Alexander v. Officers of State* (1868), 1 H. L. Sc. 276.)

In revenue cases the costs follow the event unless it is otherwise ordered. (*A.-G. v. Countess Blucher de Wahlstatt* (1864), 3 H. & C. 374; 34 L. J. Ex. 29.) As to costs on a new trial, see Exchequer Rule 109 (p. 770).

As to the allowance of costs where an information was successful in part only, see *A.-G. v. Shillibeer* (1849), 6 Ex. 606; 19 L. J. Ex. 115; and compare *A.-G. v. Lord Carrington* (1843), 6 Beav. 454; 12 L. J. Ch. 453.

Where a verdict was entered by consent against each of two defendants to an information for a specific sum, but judgment was entered generally on the *postea* against both defendants for the total amount, it was held that the costs were rightly taxed generally against both defendants. (*A.-G. v. Roberts* (1855), 1 Jur. (N. S.) 1024.)

On an English information, the Attorney-General gave notice that he did not intend to proceed further, but refused to discontinue, and the Court held that it had no power to dismiss the information for want of prosecution, and that it therefore could not order the Crown to pay the defendant's costs. (*A.-G. v. Williamson* (1889), 60 L. T. 930.)

Some cases on costs on extents are cited in Manning, Exch. Pr. (ed. 2), pp. 69, 70, but are not of sufficient importance to be reproduced here. It was held in *R. aux. Simpson v. Hopper* (1816), 3 Price, 40, that the Crown Debtors Act, 1785 (see above, p. 199), did not give the Crown a right to costs in cases where it was not necessary to resort to a sale of the lands.

Petition of Right.

Costs on petition of right are dealt with in Book III. of this work, above, p. 397.

Mandamus, Prohibition and Certiorari.

It was settled by *R. v. Archbishop of Canterbury*, [1902] 2 K. B. 503; 71 L. J. K. B. 932, that where the Crown is a party to the argument of a rule for a prerogative writ of mandamus, the Court

has no jurisdiction to give costs either to or against the Crown, but the Court (at p. 572) did not wish to express an opinion as to matters other than the prerogative writ of mandamus, or even as to that writ when it was applied for by or against the officers of executive departments of the public service in relation to their statutory or other duties. But, *semble*, the same principle would also apply to this latter case unless there was specific statutory provision for the payment or receipt of costs, and also to writs of prohibition and certiorari. As to certiorari, see *R. v. Local Government Board for Ireland* (1901), not reported, cited in *In re Madden's Estate*, [1902] 1 I. R. 63, 68.

The decision in *R. v. Archbishop of Canterbury, ubi sup.*, must be taken to supersede in this respect such cases as *R. v. Secretary of State for War*, [1891] 2 Q. B. 326; 60 L. J. Q. B. 457; and *R. v. Staines Union* (1894), 10 R. 292, 307, where costs were awarded in mandamus proceedings against and on the prosecution of Government Departments respectively, but without argument. See also *Mews v. R.*, and *Middlesex JJ. v. R.*, cited above, p. 617, and *R. (Postmaster-General) v. Great Northern Rail. Co.*, [1908] 2 I. R. 32.

Appeals from Inferior Courts.

In *R. v. Beadle* (1857), 7 E. & B. 492; 26 L. J. M. C. 111, an excise officer on behalf of the Crown laid an information before justices charging the use of a stage carriage without a licence. The defendant was acquitted, and the officer unsuccessfully appealed to Quarter Sessions, where he was ordered to pay the costs of the appeal. It was held, in proceedings for a certiorari, that the award of costs was wrong, since sect. 5 of the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), did not bind the Crown (see also sect. 2 of the Act), and the Crown Suits Act, 1855, did not apply to such a case.

In *Moore v. Smith* (1859), 1 E. & E. 597; 28 L. J. M. C. 126, on the other hand, where costs had been awarded by the High Court to the respondent against a revenue officer on an appeal by way of special case from a conviction by justices on a similar information, the Court held that the costs were rightly awarded, on the ground that the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 6, under which the Court heard the appeal by way of special case, covered all cases of appeal, and, in particular, that sect. 4 of that Act, which provides that the justices shall not refuse to state a case, if application is made to them by or under the direction of the Attorney-General, showed that appeals by or on behalf of the Crown were intended to be included.

These two cases were recently discussed in *Thomas v. Pritchard*, [1903] 1 K. B. 209; 72 L. J. K. B. 23, where it was held that, by virtue

of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 18, and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 53, a Court of summary jurisdiction can award costs to or against the Crown in summary proceedings under the Revenue or Customs Acts. The decision was based on sect. 53 of the Act of 1879, which provides that the Summary Jurisdiction Acts shall apply to such proceedings, and the principle of *Moore v. Smith*, *ubi sup.*, was followed. The judgment no doubt rested upon stronger grounds than that in *Moore v. Smith*, *ubi sup.*, but it seems to the author that both these decisions may deserve reconsideration. They seem to be somewhat of an infringement on the principles that the Crown is not bound by statutory provisions unless there is a clear intention that it should be bound, and that the Crown does not receive or pay costs apart from statutory provisions in that behalf.

Traverse of Escheat.

If the Crown is to be regarded as a plaintiff in such proceedings (see above, p. 439), it apparently pays and receives costs under the Crown Suits Act, 1855, ss. 1, 2 (p. 673); and this was so held, though the matter was scarcely argued, in *R. v. Carlisle Corporation* (1888), not reported. In the most recent case, *R. v. Manning* (1902), not reported, judgment was given for the Crown with costs, but the matter was not argued. Apart from the statute, there would be no costs for or against the Crown. (See *Ward v. Templeton* (1787), Vern. & S. 123.)

Chancery.

The Attorney-General.

The general rule that the Crown neither pays nor receives costs, apart from statutory provisions to the contrary, is not completely applicable to proceedings in Chancery. In *A.-G. v. Earl of Ashburnham* (1823), 1 Sim. & S. 394, 397, a charity information filed by the Attorney-General without a relator, under 59 Geo. III. c. 91, s. 1 (now repealed), Leach, V.-C., said: "It is said that although this result may not have been in the contemplation of the Legislature, it is the necessary consequence of a general principle that the Crown can neither pay nor receive costs. I find no such general principle in Courts of Equity. The Attorney-General constantly receives costs, where he is made a defendant in respect of legacies given to charities (see *Moggridge v. Thackwell* (1803), 7 Ves. 36, 88); and even where he is made a defendant in respect of the immediate rights of the Crown in cases of intestacy. And where charity informations have been filed by the Attorney-General, costs have frequently been awarded him in inter-

locutory matters, independently of the relator. And this supposed general principle, which is asserted by the defendants, is not maintained by any decision, or by any dictum, which appears in any reported case. Collecting the law of the Court, in this case as in others, from its practice, I am of opinion that although the Attorney-General, suing in discharge of his public duty, could never be made to pay costs in a Court of Equity, and that he was, therefore, obliged to name a relator in matters of charity, yet it is not the rule of a Court of Equity that he cannot receive costs, and that the defendant must, in this case, pay his costs." This statement was confirmed by Lord Langdale, M.R., in *A.-G. v. London Corporation* (1849), 12 Beav. 171, 178, but in the same case on appeal (1850), 2 Mac. & G. 247; 19 L. J. Ch. 314, Lord Cottenham, L.C., after a careful consideration of the matter, said: "I have consulted with the best authorities upon the subject, and we are all of opinion that it would be well to consider, not as a rule without exception (because it is always a matter of discussion to a certain extent), but as a general rule, that the principle that the Attorney-General never receives nor pays costs may be modified in this way, namely, that the Attorney-General never receives costs in a contest in which he could have been called upon to pay them had he been a private individual."

A similar principle was followed in *Kane v. Reynolds* (1854), 2 Sm. & G. 331, affirmed 4 D. M. & G. 565; 24 L. J. Ch. 321. See below, p. 625, and the other cases there cited.

The Crown Suits Act, 1855 (printed below, p. 673), applies, of course, to proceedings in the Chancery Division, which fall within its terms. Thus, in *A.-G. v. Hammer* (1859), 4 De G. & J. 205, an information by the Attorney-General, it was held that those persons who were made parties after the passing of the Act were entitled to their costs against the Attorney-General, and the form of the order is given. This form was also adopted in *A.-G. v. Sittingbourne, &c. Rail. Co.* (1866), L. R. 1 Eq. 636; 35 Beav. 268; 35 L. J. Ch. 318. See also *Lautour v. A.-G.* (1865), 5 N. R. 102, 231.

The Act does not apply to charity informations, but only to cases where the property recovered goes to the public revenue. *A.-G. v. Dean and Canons of Windsor* (1860), 8 H. L. C. 369, 459; 30 L. J. Ch. 529. See also *A.-G. v. Earl of Chesterfield* (1854), 18 Jur. 686, and *A.-G. v. Grainger* (1859), 7 W. R. 684.

Where the Attorney-General is made a defendant in respect of funds bequeathed to charitable purposes, he constantly receives his costs as between solicitor and client out of the estate (*Moggridge v. Thackwell* (1803), 7 Ves. 36, 88, affirmed (1807), 13 Ves. 416; *Mills v. Farmer* (1815), 19 Ves. 483, 490; *A.-G. v. Lewis* (1845), 8 Beav.

179; *A.-G. v. Earl of Ashburnham* (1823), 1 Sim. & S. 394, 397), or where he represents the rights of the Crown in a case of intestacy. (*A.-G. v. Earl of Ashburnham*, *ubi sup.*; *Bauer v. Mitford* (1860), 3 L. T. 575; 9 W. R. 135.) In *Hunter v. A.-G.*, [1899] A. C. 309; 68 L. J. Ch. 449, the House of Lords gave the Attorney-General, who was defendant in the action as representing an alleged general charitable gift of residue, his costs of a successful appeal, to which he was respondent, out of the estate; but Lord Halsbury, L.C., wished to guard himself from saying that this course was to be established as an absolute precedent.

The opposite course was followed in *Partington v. Reynolds* (1858), 6 W. R. 615, where the Crown's nominee sued as administrator and appealed unsuccessfully.

In *Perkins v. Bradley* (1842), 1 Hare, 219, 234, where the Attorney-General was defendant claiming interest in the goods of a felon convict, the subject of the suit, and was unsuccessful, Stuart, V.-C., said that he could not find that there had been a practice of invariably giving the Attorney-General his costs of appearing on behalf of the Crown out of the fund which was the subject in dispute, and that it would be most oppressive to lay it down as a rule that the Crown might, in every case of suggested right, appear and contest the interests of the other parties at their expense. He therefore refused to give the Attorney-General his costs of the suit, on the ground that the Crown's unsuccessful claim was adverse to the other parties, and was not a mere legal claim, admitting the beneficial interest to be in other persons. *Murphy v. Osborne* (1846), 9 Ir. Eq. R. 254, was a similar decision. So in *Burney v. Macdonald* (1845), 15 Sim. 6, where the Crown appeared because the rights of an alien were involved (compare *Rittson v. Stordy* (1855), 3 Sm. & G. 230), the Court refused to give the Attorney-General his costs, though it gave all the other parties their costs as between solicitor and client out of the estate. See also *Kitchener v. Kitchener* (1849), 18 L. J. Ch. 152, and *Gough v. Davies* (1856), 25 L. J. Ch. 677, cases of felon's property, where the Attorney-General was refused his costs. In *Gloucester Corporation v. Wood* (1843), 3 Hare, 131, the Attorney-General supported the unsuccessful claim of the plaintiffs, and was not allowed costs.

A full argument of the matter will be found in *Earl of Kilmorey v. A.-G.* (1892), 29 L. R. Ir. 320, an information to establish a right to foreshore. The Attorney-General did not actively contest the claim, but did not admit it until the plaintiff's right had been established by evidence at the trial. The Court refused him his costs. See the English and Irish cases there cited. See also *Vandeleur v. Glynn*, [1905] 1 I. R. 483, 531.

Where the Attorney-General attended in a cause, to which he was not a party, to support a claim for legacy duty upon a fund in Court, and the claim failed, it was held that he was not entitled to costs. (*Hobson v. Neale* (1853), 17 Beav. 178; 22 L. J. Ex. 175.) But where notice of proceedings was served upon the Attorney-General by the direction of the Court, in proceedings as to the construction of a will, he was given his costs, though the decision was against the Crown. (*In re Belfast Town Council* (1884), 13 L. R. Ir. 169.)

In *A.-G. v. Ward* (1848), 11 Beav. 203; 17 L. J. Ch. 485, a charity case, where the Attorney-General and the trustees filed similar exceptions, the Court held that the defendants, though charged with the general costs, ought to be paid out of the fund any additional costs they had properly incurred by reason of the double set of exceptions.

The form of decree in an information without a relator, where a defendant was ordered to pay the costs of a co-defendant, will be found in *A.-G. v. Chester Corporation* (1851), 14 Beav. 338. There the trustee defendants' costs as between solicitor and client were ordered to be paid out of the charity fund, and such costs as between party and party to be paid by the other defendants. See also *A.-G. v. Mercers' Co.* (1870), 22 L. T. 222.

In *A.-G. v. Mercers' Co.* (1833), 2 My. & K. 654, it was held that the costs of an information filed to effect the due application of a charitable fund must be paid by the body in which the fund was vested, if by that body's neglect the charity had fallen into desuetude.

In *A.-G. v. Drapers' Co.* (1841), 4 Beav. 305, a charity information without a relator, the Attorney-General did not appear personally, but two other counsel supported the information, and it was held that, in a taxation of costs between party and party, the costs of a brief for the Attorney-General should be allowed in addition to those for the two counsel. Compare *Cockburn v. Raphael* (1843), 12 L. J. Ch. 263, where fees to the Attorney-General and two counsel were allowed.

The Attorney-General, in a charity matter, is entitled to his proper costs, charges and expenses, not being costs in the matter, and the method in which he should apply for an order for their taxation and payment is laid down in *In re Dulwich College* (1873), L. R. 15 Eq. 294. See also the forms of order in Seton (ed. 6), pp. 1288, 1290. Further, as to the taxation of the Attorney-General's costs, see *Nickells v. Haslam* (1845), 9 Jur. 649. As to taxation where an information failed in one of two objects and succeeded in the other, see *A.-G. v. Lord Carrington* (1843), 6 Beav. 454; 12 L. J. Ch. 453; and compare *A.-G. v. Shillibeer* (1849), 4 Ex. 606; 19 L. J. Ex. 115.

In the case of petitions under the National Debt Act, 1870

(33 & 34 Vict. c. 71), as to which see above, pp. 75, 482, sect. 55 orders the costs of the Attorney-General and the National Debt Commissioners, if not ordered by the Court to be paid out of the stocks and dividends claimed, to be paid by the Commissioners out of unclaimed dividends. It was held that the Court would order the payment of such costs, when taxed, as between party and party, out of the fund recovered, in the absence of special circumstances (*E. p. Gillett* (1818), 3 Madd. 28; *E. p. Martin* (1821), Jac. 55; *In re Holland* (1843), 1 Ph. 379); but the later practice before the Act was stated to be that the petitioner should pay such costs before the fund was transferred to him (*E. p. Sanford*, [1867] W. N. 77; *In re Steel*, [1867] W. N. 282; *Rushworth v. Walden* (1870), 18 W. R. 204).

The Treasury Solicitor as Administrator.

The Treasury Solicitor, in his capacity of administrator on behalf of the Crown, possesses the same rights and is subject to the same liabilities as an ordinary administrator (see *A.-G. v. Köhler* (1861), 9 H. L. C. 654), and his position with regard to costs in administration proceedings is that of an ordinary administrator.

In *Kane v. Reynolds* (1854), 2 Sm. & G. 331, affirmed 4 D. M. & G. 565; 24 L. J. Ch. 321, a successful suit by the claimant of an intestate's estate against the Treasury Solicitor as nominee of the Crown, it was held that the Crown's nominee was not entitled to receive his costs, though he could not be made to pay the costs of the successful plaintiff, Lord Cranworth, L.C., saying: "This is not a case in which, an administrator having got possession of the property, persons claiming under the administration sue for it. This is a case in which, the nominee of the Crown having wrongfully got possession of an intestate's estate, . . . the rightful owner sues the representative of the Crown, and recovers it from him." The same principle was applied in *Goode v. Joynt* (1874), Ir. R. 8 Eq. 425. In *Partington v. Reynolds* (1858), 6 W. R. 615, it was held that where a plaintiff succeeds in establishing his title against the Crown's nominee as administrator, the costs of the suit must come out of the estate, the Crown's nominee, as in the case of an ordinary administrator, not paying any costs. It was further held that where in such a suit the plaintiff succeeds, and the Crown appeals and fails, it can have no costs of the appeal. In *Bauer v. Mitford* (1860), 3 L. T. 575; 9 W. R. 135, where the Crown's nominee was appealing to the House of Lords, the successful claimants moved for payment of costs pending the appeal. Certain of the costs were ordered to be paid out of the fund, and the costs of the application, on the suggestion of counsel for the Crown, were ordered to be paid by the Crown's

nominee, who had been in possession of the intestate estate in question in the suit, the difficulty of ordering the Attorney-General to pay costs being thus avoided.

Now, by the Intestates Estates Act, 1884, s. 2 (below, p. 735), proceedings by or against the Crown's nominee for the recovery of personal estate administered by him are subject to the same rules of law and equity as though he were an ordinary administrator. So, for instance, he will be ordered to give security for the costs of discovery under Ord. XXXI. rr. 25, 26, 27.

Actions by the Attorney-General with a Relator.

The Attorney-General.

The general principles as to Crown costs at common law and in equity, which have been discussed above, pp. 613, 621, apply; but one or two matters require separate notice.

Where it is necessary for the Attorney-General to appear separately from the relator, as, for instance, where there is a difference of interests, or there is reason for suspecting the relator of collusion with the defendant, the Attorney-General is entitled to the costs of his separate appearance. (See the order in *Seton* (ed. 6), p. 1290.) But it appears from *A.-G. v. Dove* (1823), Turn. & R. 328, that in such a case the Attorney-General ought to apply to the Court for a direction that he should appear separately, or, as in that case, he may be refused such costs.

It was further stated in *A.-G. v. Earl of Ashburnham* (1823), 1 Sim. & S. 394, 397, that, in interlocutory matters, costs had been frequently awarded to the Attorney-General independently of the relator.

Costs were given to the Attorney-General against the relator, where an information was dismissed, in *A.-G. v. Carrickfergus Commrs.* (1868), 21 L. T. News. 40, 119.

The Relator.

One of the principal uses, if not the principal use, of a relator is that there should be some person or body who can be ordered to pay the costs in case the action is unsuccessful. (See the cases cited on pp. 465, 468, above.) Costs are awarded, in general, on the same principle as in ordinary actions.

A relator was ordered to give security for costs in *A.-G. v. Skinners' Co.* (1837), C. P. Coop. 1; but in *A.-G. v. Knight* (1837), 3 My. & Cr. 154, where, on an information and bill, the same individual was both relator and plaintiff suing in his own right, the Court held

that it had no power to stop the plaintiff's suit, on the ground that he, as relator, having been called upon by the Attorney-General to give security for costs, had failed to do so. Where a relator became insolvent after the hearing, and while the case was standing for judgment, it was held that the defendants were entitled to have a new and solvent relator appointed, or to have security for past as well as future costs. (*A.-G. v. Roche* (1877), Ir. R. 11 Eq. 251.) In proceedings analogous to proceedings by information and bill, where the plaintiff was suing on behalf of a body of persons and not in his own right, he was ordered to give security for costs on affidavits of his insolvency. (*Tredwell v. Byrch* (1835), 1 Y. & C. 476.)

As to stay of execution for costs against relators pending appeal, see *A.-G. v. Dublin Corporation* (1824), 2 Moll. 355.

In *A.-G. v. Smart* (1748), 1 Ves. Sen. 72, an information was dismissed with costs against the relator, Lord Hardwicke, L.C., observing: "Nothing should be more discouraged than the bringing informations colourably for the benefit of a charity, but contrary to the real charity."

So in *A.-G. v. Middleton* (1751), 2 Ves. Sen. 327, it was said that the rule that an information for a charity is not to be dismissed, if the party has failed to pray the proper relief, holds only in those cases which the Court thinks proper for its interference at all (see the cases there cited), but not where the information is improper. The information in that case was therefore dismissed with costs against the relator, since the Court held that it had proceeded from a private motive of revenge in the relator. The same principles were laid down in *A.-G. v. Merchant Tailors' Co.* (1835), 5 L. J. Ch. 62, and in *A.-G. v. Bosanquet* (1841), 11 L. J. Ch. 43. In *A.-G. v. Brewers' Co.* (1717), 1 P. Wms. 376, the costs were ordered not to follow the event, since the defendants had claimed too much against the charity, and the relators had been serviceable to the charity in fighting the matter. Compare *A.-G. v. Bolton* (1797), 3 Anst. 820. In *A.-G. v. Oglender* (1790), 1 Ves. Jun. 246, a charity information was dismissed because the relator had no title, and the Court refused to give costs out of the fund, but as to this case see above, pp. 468, 469.

In *A.-G. v. Cullum* (1836), 1 Keen, 104; 5 L. J. Ch. 220, a charity information was dismissed in part with costs against the relators; and, as to the other part, no costs were given to the relators up to the hearing, the information not appearing to have been filed for the benefit of the charity, and having been instituted and conducted so as to cause great unnecessary expense.

A similar decision is to be found in *Southmolton Corporation v. A.-G.* (1854), 5 H. L. C. 1; 23 L. J. Ch. 567.

In *A.-G. v. Fishmongers' Co.* (1837), 1 Keen, 492, a charity information, the Court directed the defendants to pay the costs as between party and party, and refused the relators their extra costs out of the fund, considering that the suit was not for the benefit of the charity.

In *A.-G. v. Hartley* (1820), 2 Jac. & W. 353, 370, the Court asserted its entire discretion as to the costs of charity informations, in order to control the filing of improper informations.

It has recently been held in Ireland (*A.-G. v. Allman*, [1906] 1 I. R. 473), that where an action is brought by the Attorney-General with a relator to have a public trust carried out, or a charitable scheme settled, and where it appears that the defendant has a defence to the action, or that there is some question to be tried, the Court will order the relator, if without visible means, to give security for costs.

Where the procedure by relator action is adopted in a case where a petition is the proper form of proceeding, the Court will refuse the relator his costs (*A.-G. v. Berry* (1847), 11 Jur. 114); just as they will refuse costs of abortive charity proceedings of another kind, as in *In re Poplar and Blackwall Free School* (1878), 8 Ch. D. 543. In *A.-G. v. Biddulph* (1853), 22 L. T. (O. S.) 114, the relator, under such circumstances, was allowed his costs, because the information had been sanctioned by the Attorney-General, but the Court intimated that this ought not to occur in future.

In a charity action a relator is, in a proper case, given his costs as between solicitor and client, and is to be paid out of the charity estate the difference between the amount thereof and the portion recovered from the defendants. (*A.-G. v. Kerr* (1841), 4 Beav. 297; 10 L. J. Ch. 373; compare *A.-G. v. Carte* (1746), 1 Dick. 113, and *A.-G. v. Taylor* (1802), not reported, cited in *Osborne v. Denne* (1802), 7 Ves. 424.)

But where a suit was, in the Court's opinion, not brought for the benefit of the charity, the relators were only awarded party and party costs. (*A.-G. v. Fishmongers' Co.* (1837), 1 Keen, 492.)

In special cases the relator may be awarded his charges and expenses in addition, if good reason for this is established. (*A.-G. v. Kerr* (1841), 4 Beav. 297; 10 L. J. Ch. 373; *A.-G. v. Winchester Corporation* (1824), C. P. Coop. 502; 5 L. J. (O. S.) 64; *A.-G. v. Skinners' Co.* (1821), Jac. 629.) But where a relator, *bonâ fide* and in a manner advantageous to the charity, had incurred expenses without the sanction of the master, the Court, while allowing him the money out of pocket so expended by him, refused him the other costs of what he had done. (*A.-G. v. Ironmongers' Co.* (1847), 10 Beav. 194.)

The costs of and incidental to proceedings with regard to the Attorney-General's fiat were held to be costs in the cause in *A.-G. v. Halifax Corporation* (1871), L. R. 12 Eq. 262; 41 L. J. Ch. 100. But in *A.-G. v. Harper* (1838), 8 L. J. Ch. 12, the Court held that it had no authority to make any adverse order with regard to the costs of proceedings before the Attorney-General on a memorial not under its direction or sanction.

Probate and Administration.

It was held in *Atkinson v. Queen's Proctor* (1871), L. R. 2 P. & M. 255; 40 L. J. P. 49, that the Court had no power to condemn the Queen's Proctor (Treasury Solicitor) in the costs of unsuccessful litigation in a probate suit. This case, it would seem, must be taken as disapproving of *Dyke v. Barton* (1856), 10 Moo. P. C. 458, where the Crown's nominee was condemned in the costs of an unsuccessful appeal in a probate suit, apparently under the provisions of the Crown Suits Act, 1855, s. 2. It is impossible to see what that Act had to do with the matter.

In *Rutherford v. Maule* (1832), 4 Hagg. Ecc. 213, it was said by the Court that it would not give the Crown costs against an unsuccessful plaintiff, where the Crown had the fund in its hands, except where the plaintiff's case was a fabrication. *Sed quere*.

In *Brill v. Fisher* (1906), not reported, the Court only allowed one set of costs between the Crown and the alleged next-of-kin out of the estate, where the plaintiff had established a draft will of the deceased; the Crown and the next-of-kin, of course, having both pleaded intestacy, and therefore being, for the purpose of these proceedings, in the same interest.

In a proper case the Crown, where successful, consents to all the costs coming out of the estate, as in *Burrows v. Treasury Solicitor* (1906), not reported, and the rule is to give the Crown its costs out of the estate, where, though unsuccessful, it was a necessary and proper party to the proceedings.

Where the Attorney-General was a necessary party and intervened, he was allowed his costs. (*Daly v. Burke* (1863), 8 Ir. Jur. (N. S.) 73.) But where he was served with notice of a motion for administration of goods, in which the Crown had no interest, and as to which it set up no case, he was held not to be entitled to his costs of appearance. (*Redmond v. Barber* (1863), 8 Ir. Jur. (N. S.) 312.) See also the cases as to the costs in Chancery of the Attorney-General as a defendant and of the Treasury Solicitor, above, pp. 621, 625.

Divorce and Nullity of Marriage.

By the Matrimonial Causes Act, 1860 (23 & 24 Vict. c. 144), s. 7, and the Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 2, where the King's Proctor or any other person intervenes or shows cause against a decree *nisi* in any suit or proceeding for divorce or for nullity of marriage, the Court may make such order as to the costs of the King's Proctor or of any such other person or of all and every party or parties thereto occasioned by such intervention or showing cause, as may seem just; and the King's Proctor, such other person and such party or parties shall be entitled to recover such costs in like manner as in other cases; provided that the Treasury may, if it thinks fit, order any costs ordered to be paid by the King's Proctor to be deemed to be part of the expenses of his office. Any reasonable costs awarded to the King's Proctor, which he cannot recover, are to be part of the expenses of his office.

Apparently, the King's Proctor may also employ prerogative process, in addition to the ordinary remedies as provided above, for the recovery of his costs (see the remarks as to the recovery of costs on petition of right, above, p. 398). In *E. p. Rayner* (1877), 37 L. T. 38, the Queen's Proctor was held entitled to lodge a petition in bankruptcy for costs ordered to be paid to his predecessor.

The statutory provisions cited above override the decision in *Lautour v. Queen's Proctor* (1864), 10 H. L. C. 685; 33 L. J. P. 89, that the Queen's Proctor was not entitled to costs, and that in *Bowen v. Bowen* (1864), 3 Sw. & Tr. 530; 33 L. J. P. 129, to the effect that he could not be awarded costs when appearing as one of the public.

The co-respondent cannot be condemned in the costs of the King's Proctor, if he is not made a party to the proceedings (*Blackhall v. Blackhall* (1888), 13 P. D. 94; 57 L. J. P. 60); *secus*, if he is made a party by citation, even if he does not appear. (*Taplen v. Taplen*, [1891] P. 283; 60 L. J. P. 88.)

In *A. v. A.*, [1901] P. 284; 70 L. J. P. 90, the Court refused to allow the petition to be dismissed on the petitioner's motion, after the intervention of the King's Proctor, unless the King's Proctor's costs, if he desired them, were first provided for; see also *Collins v. Collins* (1881), 44 L. T. 31; *Gray v. Gray* (1861), 2 Sw. & Tr. 266; 30 L. J. P. 119.

In *Rogers v. Rogers*, [1894] P. 161; 63 L. J. P. 97, the Court, in rescinding a decree *nisi*, made no order as to the costs of the Queen's Proctor's intervention, where no moral fault attached to the petitioner. In *Cox v. Cox* (1861), 2 Sw. & Tr. 306; 30 L. J. P. 255, and *Barnes v. Barnes* (1867), L. R. 1 P. & M. 505; 37 L. J. P. 4, no order

as to costs was made against the petitioner, under special circumstances.

Where the Queen's Proctor applied for leave to amend certain dates in his plea, he was ordered to pay the costs of the application. (*Tomkins v. Tomkins* (1872), 20 W. R. 497.)

As to costs against a pauper, *Jeune, P.*, in *White v. White*, [1898] P. 124; 67 L. J. P. 63, said: "The costs of the intervention of the Queen's Proctor in the case of a pauper petitioner are entirely in the discretion of the judge, and an unsuccessful pauper petitioner is therefore liable to an order condemning him in the full costs of the intervention." This case was followed in *Guy v. Guy* (1900), 17 T. L. R. 4. See also *Richardson v. Richardson*, [1895] P. 276, 346; 64 L. J. P. 93, 119.

Legitimacy Declaration and Greek Marriage Proceedings.

In legitimacy declaration proceedings the Court has full power to award and enforce payment of costs to any persons cited, whether such persons do or do not oppose the declaration for which application is made, if the Court deems it reasonable that such costs should be paid. (Legitimacy Declaration Act, 1858, s. 5, p. 675.)

In *Frederick v. A.-G.* (1874), L. R. 3 P. & M. 270; 44 L. J. P. 1, the question was raised, but not decided, whether the Court could order a party cited to pay costs, and it was decided in *Bain v. A.-G.*, [1892] P. 261; 61 L. J. P. 135, that it has such power, inasmuch as sect. 4 of the Act of 1858 applies sect. 51 of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), to legitimacy declaration proceedings.

As to the Attorney-General's costs, it was stated in argument in *Bain v. A.-G.*, [1892] P. 217; 61 L. J. P. 107, affirmed [1892] P. 261; 61 L. J. P. 135, that up to 1889 the Crown never applied for costs, and that they were given to the Crown in *Brinkley v. A.-G.* (1890), 15 P. D. 76; 59 L. J. P. 51, but refused in *Buddeley v. A.-G.*, not reported; and Butt, P., in his judgment said: "There being no express mention of the Crown, and nothing which by implication can apply to the Crown, the ordinary rule prevails that the Crown is not liable to costs, and, not being liable, does not receive them. I therefore shall not give the Crown costs either against the party cited or against the petitioner."

It follows that the Court will not, on the application of the Attorney-General, order a petitioner, who is resident abroad, to give security for costs. (*Shedden v. A.-G.* (1867), 36 L. J. P. 132.)

In Ireland, in *King v. A.-G.* (1870), Ir. R. 4 Eq. 464, the Court held that it had power to give costs to the Attorney-General where

the petition was dismissed, but not where the petition was successful; but in a previous case, *A. B. v. A.-G.* (1869), Ir. R. 4 Eq. 56, which was not cited to the Court, it had been held that the Court had no power to give costs to the Attorney-General.

The decision in *Bain v. A.-G.*, *ubi sup.*, as to the Attorney-General's costs will apply to proceedings under the Greek Marriages Act, 1884; *sed quare* as to that decision, so far as it regards the costs of parties cited, inasmuch as sect. 51 of the Matrimonial Causes Act, 1857, does not apply to Greek marriage proceedings. (See above, p. 508.)

Admiralty.

Where a suit is instituted on behalf of the King in his Office of Admiralty, the Court cannot award costs either to or against the Crown (*The Duke of Sussex* (1841), 1 W. Rob. 274; *The Leda* (1863), Br. & L. 19; 32 L. J. P. 58); but where there are co-suitors with the Crown they may be severally condemned in the whole costs of the suit (*The Leda*, *ubi sup.*). In this latter case it is pointed out that *R. v. Belcher* (1849), 6 Moo. P. C. 471, does not decide anything to the contrary.

The Postmaster-General was given his costs of appeal on a claim by him as bailee for negligent loss of goods in *The Winkfield*, [1902] P. 42; 71 L. J. P. 21. Costs may be awarded to or against the commander of a King's ship (*H.M.S. Swallow* (1856), Swa. 30; *H.M.S. Inflexible* (1856), Swa. 32).

As to costs under the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), it was left doubtful in *The Gauntlet* (1872), L. R. 4 P. C. 184; 41 L. J. Adm. 65, whether the Court had power to condemn the Crown in costs. The words of the Crown Suits Act, 1855 (18 & 19 Vict. c. 90), s. 1 (p. 673), are wide enough to cover proceedings by the Crown under this Act, except that it says that "The Attorney-General shall be entitled to recover costs"; it might, therefore, be argued that where the Crown is not appearing by the Attorney-General (in Admiralty matters it appears by the King's Proctor), the section does not apply. *Sed quare.*

Bankruptcy.

The Crown is not bound by sect. 105 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) and Bankruptcy Rule 108, which relate to costs, and therefore cannot be ordered to pay or be awarded costs in bankruptcy proceedings. This has been held under Irish bankruptcy law in *In re Galvin*, [1897] 1 I. R. 520; [1898] W. N. 140.

Lunacy.

Lord Eldon, L.C., in *E. p. Ferne* (1801), 5 Ves. 832, said that he had no power to give costs on a successful traverse of an inquisition,

since there was no fund, the lands and goods having never come into the hands of the Crown; compare *E. p. Glover* (1816), 1 Mer. 269. But in *Sherwood v. Sanderson* (1815), 19 Ves. 280, where there was a fund, costs were allowed. The terms of the Crown Suits Act, 1855 (p. 673), which are wide enough to apply to proceedings for traverse of escheat, do not appear to cover traverses of inquisitions in lunacy.

Proceedings under the Marriage Acts.

In *A.-G. v. Akers*, [1872] W. N. 45, the relator had made himself responsible for the costs of the offending husband, and the Court refused to allow the husband's costs out of the fund. See also *A.-G. v. Clements* (1871), L. R. 12 Eq. 32; 40 L. J. Ch. 678. In the ordinary course the defendant will be ordered to pay the costs of the Attorney-General and the relator, as in *A.-G. v. Read* (1871), L. R. 12 Eq. 38.

Proceedings with regard to Letters Patent for Inventions.

The Attorney-General did not ask for, nor was he ordered to pay, costs on proceedings before the Privy Council for extension of patents (now transferred to the High Court). Neither is anything provided as to costs in proceedings at the Treasury to settle remuneration for the user of patents by the Government. As to the Comptroller's costs, see above, p. 102.

Scire Facias in the Crown Office Department.

It was said in *R. v. Hobart* (1848), 11 Ir. Eq. R. 397, that costs could not be given against the Crown on a *scire facias* on a recognisance. So also *R. v. Miles* (1797), 7 T. R. 367, in the case of a *scire facias* to repeal letters patent for an invention. Ord. LXVIII. r. 2, applies Ord. LXV., which deals with costs, to all civil proceedings on the Crown side of the King's Bench Division.

Arbitration.

The Arbitration Act, 1889 (52 & 53 Vict. c. 49), by sect. 23, is not to affect the law as to costs payable by the Crown. The Crown will, therefore, not pay or receive costs in arbitration proceedings, unless the arbitration is held under some statute which contains some provision in that behalf. See further above, p. 131.

APPENDIX OF PRECEDENTS.

Affidavits in support of a Claim of Privilege for Government Documents.

In an Action against the Commander of a King's Ship.

I.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.

(Admiralty.)

Between The Owners of X. (and crew suing for their lost
effects) - - - - - Plaintiffs,
and
A. B. - - - - - Defendant.
(H.M.S. "Y.")

I, A. B. of a captain in His Majesty's Navy, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second schedules hereto.

2. I object to produce the documents set forth in the second schedule hereto on the following grounds, namely:—

3. That the documents specified in Part 1 of the second schedule are in their nature privileged, being documents relating solely to my defence in this action.

4. That the documents specified in Part 2 of the second schedule are privileged, being communications between me and the Admiralty and official minutes and despatches for the information of my Naval Superior and the Lords Commissioners of the Admiralty, all of which are in the nature of confidential communications, the production of which would, as I am informed and believe, be injurious to the public service.

5. [*As para. 5 on p. 636, below.*]

The First Schedule above referred to.

The rough log of H.M.S. "Y."

Copy rough Engine Room Register.

Copy fair Engine Room Register.

Correspondence between the Plaintiffs' and Defendant's solicitors relating to the action.

Copy correspondence between the Plaintiffs' solicitors and the Solicitor to the Treasury.

Proceedings in the action common to both parties.

The Second Schedule above referred to.

Part 1.

Instructions to and opinions and drafts of Counsel. Drafts and communications passing between me and my solicitor. Documents sent to my solicitor in answer to inquiries by him for the purpose of obtaining evidence in this action or information which might lead to the obtaining of such evidence or information as to the evidence which could be obtained or otherwise for the use of my solicitor to enable him to conduct my defence in this action and advise me in reference thereto.

Part 2.

Drafts and copies of Reports made to the Admiralty by me in pursuance of my official duty and of official minutes and despatches made solely for the information of my Naval Superior and the Lords Commissioners of the Admiralty and in pursuance of my official duty.

(Signed) A. B.

Sworn, &c.

II.

[*Title as above.*]

I, Sir C. D., Permanent Secretary to the Lords Commissioners for executing the Office of Lord High Admiral make oath and say as follows:—

1. I have read an office copy of the Affidavit made by Captain A. B., the Defendant in this action, and filed on .

2. The documents referred to in the second part of the second schedule to that Affidavit as confidential communications between the said Defendant and the Admiralty are certain reports made to the Admiralty by Captain A. B. in pursuance of his official duty.

3. Such reports are solely for the information of the reporting officer's Naval Superior and the Lords Commissioners of the Admiralty and are in the nature of confidential communications.

4. It will be prejudicial to the public interests to allow the said reports to be inspected by the Plaintiffs or their solicitors or agents in this action or in any other action or proceedings.

(Signed) C. D.

Sworn, &c.

In an Ordinary Action between Subject and Subject.

I.

IN THE HIGH COURT OF JUSTICE.

Division.

Between A. B. and C. D. - - - - - Plaintiffs,
and

E. F. and G. H. - - - - - Defendants.

AFFIDAVIT of K. L., of , in the County of .

Sworn day of .

Filed day of .

Saith—

1. The Plaintiffs have in their possession or power the documents relating to the matters in question in this action set forth in the schedules hereto.

2. The Plaintiffs claim to seal or cover up such portions of the documents set forth in the first schedule hereto as do not relate to the matters in question in this action and object to produce the documents set forth in the second schedule upon the ground that the same are privileged as appears from the description thereof in the said schedule.

3. The Plaintiffs also object to produce the documents described in the third schedule hereto as "a bundle of documents marked 'A'" on the following grounds. The documents contained in the said bundle consist of written communications and a written agreement between the Plaintiffs and the Lords Commissioners of the Admiralty and of communications between the Plaintiffs of the one part and the Admiral Commanding Coastguards and Reserves and his Secretary of the other part and relate to matters which are connected with the defence of the Realm. In the course of the proceedings in this action I transmitted the said documents (together with certain others) to the Secretary of the Admiralty and he on the day of wrote to me in regard to the said documents (which he has returned to me) the letter which is now shown to me and marked "K. L." In pursuance of the requirement and direction contained in the said letter I claim privilege for the documents contained in the said bundle marked "A" (which is the bundle referred to in the said letter) on the ground that the same are State documents and that their disclosure or production for inspection would be injurious to the public interest.

4. I consider that portions of the correspondence between the Plaintiffs and the Defendants do not strictly relate to the matters in question in this action but the Plaintiffs have nevertheless judged it more convenient to produce the whole correspondence. The same remark applies also to certain others of the documents included in the first schedule.

5. Save as aforesaid according to the best of my knowledge information and belief the Plaintiffs have not now and never had in their possession custody or power or in the possession custody or power of their solicitors or agents or any of them or in the possession custody or power of any other person or persons on their behalf any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this action or wherein any entry has been made relative to such matters or any of them other than and except the documents set forth in the said schedules hereto.

First Schedule.

[Various documents relating to the action.]

Second Schedule.

Sundry documents obtained and correspondence conducted by the Plaintiffs on the advice of or after consultation with their solicitors, and for the purposes of this action.

The papers in this action (including Counsel's opinions drafts &c. &c.) and correspondence between the Plaintiffs and their solicitors.

Third Schedule.

A bundle marked "A" of documents (numbered 1 to 11) being the documents referred to in paragraph 3 of this Affidavit.

II.

[*Title as above.*]

AFFIDAVIT of M. N.

Sworn	day of	.
Filed	day of	.

Saith—

1. I am the permanent Secretary to the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland.

2. During the course of the proceedings in this action the Plaintiffs transmitted to the Admiralty certain documents consisting of copies and originals of certain written communications that have passed between the Admiralty and the Plaintiffs and certain agreements that have been made between them and of communications between the Plaintiffs of the one part and the Admiral Commanding Coastguards and Reserves and his Secretary of the other part. All the said documents were submitted to Vice-Admiral Sir O. P., the second Sea Lord, for his inspection and examination on behalf of the said Commissioners, and after inspecting and examining them all, he directed me to write on behalf of the said Commissioners to the above-mentioned Plaintiffs and to require them not to disclose certain of the said documents or their contents to the Defendants or any one on their behalf nor produce them for inspection in this action and to require them to claim privilege for them on the ground that the said documents, which relate to the defence of the Realm and are in the nature of confidential communications, are State documents and that it would be injurious to the public interest that the same should be disclosed or produced for inspection and I accordingly on returning the documents to the Plaintiffs on the day of wrote to them to that effect.

3. On the above grounds I object on behalf of the Lords Commissioners of the Admiralty to the said documents or their contents being disclosed or inspected by the Defendants or any one on their behalf in this action.

BOOK VII.

Actions against Executive Officers of the Government.

CHAPTER I.

GENERAL PROPOSITIONS.

The Crown is not liable for the Wrongful Acts of its Servants.

THIS legal fact, which rests logically and directly on the maxim that the King can do no wrong, has been fully discussed in Book III. of this work, pp. 350 *sqq.*, with the object of showing that a petition of right will not lie in respect of a tort committed by a servant of the Crown. The matter, however, is not one of procedure, but of substance. As is pointed out in the cases there cited, if the Crown cannot do a wrong in the eyes of the law, it cannot authorise the doing of a wrong by another.

A Servant of the Crown cannot rely on the Authority of the Crown as a Defence to a Wrongful Act done to a Fellow Subject.

This proposition follows from, or is, rather, substantially identical with, the last. It was plainly laid down by Cockburn, C.J., in *Feather v. R.* (1865), 6 B. & S. 257; 35 L. J. Q. B. 200: "Let it not, however, be supposed that a subject sustaining a legal wrong at the hands of a minister of the Crown is without a remedy. As the Sovereign cannot authorise wrong to be done, the authority of the Crown would afford no defence to an action brought for an illegal act committed by an officer of the Crown The case of the general warrants, *Money v. Leach* (1765), 3 Burr. 1742, and the cases of *Sutton v. Johnstone* (1786), 1 T. R. 493, in error, and *Sutherland v. Murray* (1783), 1 T. R. 538, there cited, are direct authorities that an action will lie for a tortious act, notwithstanding it may have had the sanction of the highest authority in the State. But in our opinion no authority is needed to establish that a servant of the Crown is responsible in law for a tortious act done to a fellow subject,

though done by the authority of the Crown—a position which appears to us to rest on principles which are too well settled to admit of question, and which are alike essential to uphold the dignity of the Crown on the one hand, and the rights and liberties of the subject on the other.”

“The authority of the Crown,” as used in this proposition, includes also the authority of any Government Department or official to whom the Crown has deputed its powers in that behalf. “If any person commits a trespass (I use that word advisedly, as meaning a wrongful act or one not justifiable), he cannot escape liability for the offence; he cannot prevent himself being sued merely because he acted in obedience to the order of the executive Government or of any officer of State.” (Romer, J., in *Raleigh v. Goschen*, [1898] 1 Ch. 73; 67 L. J. Ch. 59.) A similar statement was made by Jessel, M.R., in *Hawley v. Steele* (1877), 6 Ch. D. 521; 46 L. J. Ch. 782. See also *Rogers v. Rajendro Duft* (1860), 13 Moo. P. C. 209; and *Nireaha Tamaki v. Baker*, [1901] A. C. 561, 575; 70 L. J. P. C. 66.

The words “done to a fellow subject” in the proposition are added on account of the case of *Buron v. Denman* (1848), 2 Ex. 167, which shows that the proposition does not extend outside a purely domestic forum. There a naval commander had seized slaves, and committed other trespasses without authority or justification, but his acts had been subsequently ratified by the Crown through its responsible ministers. The action was brought by a foreigner, the owner of the slaves, and it was held that the subsequent ratification of the defendant’s act was equivalent to a prior command, and rendered it an act of State, for which the Crown was alone responsible. The case is thus dealt with by Cockburn, C.J., in *Feather v. R.*, *ubi supra*. “The case of *Buron v. Denman* . . . only shows that where an act injurious to a foreigner, and which might otherwise afford a ground of action, is done by a British subject, and the act is adopted by the Government of this country, it becomes an act of the State, and the private right of action becomes merged in the international question which arises between our own Government and that of the foreigner. The decision leaves the question as to the right of action between subject and subject wholly untouched.” With this case may be read *Le Caux v. Eden* (1781), 2 Doug. 594; *Faith v. Pearson* (1816), 6 Taunt. 439; *Madrazo v. Willes* (1820), 3 B. & A. 353; *Dobree v. Napier* (1836), 2 Bing. (N. C.) 781; 5 L. J. C. P. 273; and *Carr v. Francis Times & Co.*, [1902] A. C. 176; 71 L. J. K. B. 361. Contrast *Walker v. Baird*, [1892] A. C. 491; 61 L. J. P. C. 92, where the action was between two British subjects.

A similar principle was also applied recently in *Poll v. L. A.* (1899), 1 F. 823. An alien had been prevented from landing fish at Aberdeen, and brought a note of suspension and interdict against the Lord Advocate and against certain officers who had so prevented him. The officers pleaded that in so acting they were obeying the orders of the Secretary for Scotland on behalf of the Crown, and that the Lord Advocate was aware of and concurred in such orders, and also that the act complained of was an act of State, and that no action lay in the Courts of this country at the suit of a foreigner, either against the Crown or against the servants of the Crown, in respect of such an act. The Court gave judgment for the respondents on this last plea, following *Buron v. Denman*, *ubi supra*; but the Court further held that in an action against a Crown official, if the Crown by the Lord Advocate appears in process, and states that the actions complained of were duly authorised by the Crown, proof that such actions were unauthorised is incompetent. The statement in this form appears to be open to doubt. (See the cases above, p. 638.) The truth would rather seem to be that such proof would be irrelevant, because the authority of the Crown, whether given or not, would be no defence to the official if his act was wrongful, unless the complainant were an alien and the act constituted an act of State. See also *Phillips v. Eyre* (1870), L. R. 6 Q. B. 1, 23; 40 L. J. Q. B. 28; and *Musgrove v. Chun Teecong Toy*, [1891] A. C. 272; 60 L. J. P. C. 28.

It should be observed, however, that the general proposition enunciated at the head of this paragraph does not apply to servants of the Crown, such as governors or viceroys, who, by virtue of their commission, are placed in a position of sovereign authority, so that acts done by them by virtue, and within the limits, of their delegated authority can be regarded as amounting to acts of State; but it is for the Court to determine whether any particular act is within such authority, so as to be considered an act of State. (*Musgrave v. Pulido* (1879), 5 A. C. 102; 49 L. J. P. C. 20.)

The same observation applies to subjects in whom sovereign power has been vested by charter or other grant, such as the East India Company. (See *Salaman v. Secretary of State in Council of India*, [1906] 1 K. B. 613; 75 L. J. K. B. 418, and cases there cited.)

Further, no action lies against a military officer for an act done in the ordinary course of his duty as such officer, even if done maliciously and without reasonable or probable cause. (*Dawkins v. Lord F. Paulet* (1869), L. R. 5 Q. B. 94; 39 L. J. Q. B. 53, and cases there cited.) But see also *Wilson v. 1st Edinburgh City Royal Garrison Artillery Volunteers* (1904), 7 F. 168.

**A Servant of the Crown is liable for his own Wrongful Acts only,
and not for those of his Subordinates.**

This principle was first laid down judicially in early cases with regard to the liability of the Postmaster-General.

Lane v. Cotton (1701), 1 Ld. Raym. 646, was an action on the case against the defendants as Postmaster-General, for the loss of exchequer bills from a letter by the default of subordinate officers. It was decided that the head of a public office under the Government, with power to appoint and remove the servants of the office, who are to be paid by the Government and to give at his discretion security to the Government, is not responsible to an individual for a loss occasioned by the default of such servants, but that such servants alone are responsible. The same result was arrived at in *Whitfield v. Lord Le Despencer* (1778), 2 Cowp. 754, where Lord Mansfield, C.J., said : "As to an action on the case lying against the party really offending, there can be no doubt of it, for whoever does an act by which another person receives an injury, is liable in an action for the injury sustained. If a man who receives a penny to carry the letters to the Post Office loses any of them, he is answerable; so is the sorter in the business of his department, so is the Postmaster for any fault of his own. Here, no personal neglect is imputed to the defendants, nor is the action brought on that ground, but for a constructive negligence only, by the act of their servants. In order to succeed, therefore, it must be shown that it is a loss to be supported by the Postmaster, which it certainly is not. As to the argument that has been drawn from the salary which the defendants enjoy, in a matter of revenue and police under the authority of an Act of Parliament the salary annexed to the office is for no other consideration than the trouble of executing it. The case of the Postmaster, therefore, is in no circumstance whatever similar to that of a common carrier; but he is like all other public officers, such as the Lords Commissioners of the Treasury, the Commissioners of the Customs and Excise, the Auditors of the Exchequer, &c., who were never thought liable for any negligence or misconduct of the inferior officers in their several departments." See also *Ronning v. Goodchild* (1773), 2 W. Bl. 906, and *Jones v. Monsell* (1871), Ir. R. 6 C. L. 155. These cases were discussed in the recent case of *Bainbridge v. Postmaster-General*, [1906] 1 K. B. 178; 75 L. J. K. B. 366, which decided that the Postmaster-General is not liable in his official capacity, as head of the Telegraph Department of the Post Office, for wrongful acts done by his subordinates in carrying on the business of the Department.

The general law of the matter was clearly stated by Romer, J., in *Raleigh v. Goschen*, [1898] 1 Ch. 73; 67 L. J. Ch. 59: "If the trespass has been committed by some subordinate officer of a Government Department or of the Crown, by the order of a superior official, that superior official—even if he were the head of the Government Department in which the subordinate official was employed, or whatever his official position—could be sued; but in such a case the superior official could be sued, not because of, but despite of, the fact that he was an officer of State. I think it is clear that the head of a Government Department is not liable for the neglect or torts of officials in the Department, unless it can be shown that the act complained of was substantially the act of the head himself: in which case he would be liable as an individual, just as a stranger committing the same act would be."

See also *Mersey Docks and Harbour Board Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; 11 H. L. C. 686; 35 L. J. Ex. 225, per Blackburn, J., and *Tobin v. R.* (1864), 16 C. B. (N. S.) 310, 351; 33 L. J. C. P. 199.

There are several cases which illustrate this principle.

In *Nicholson v. Mounsey* (1812), 15 East, 384, the captain of a King's ship was held not to be liable for damages for collision, where the damage was done by the actual direction of the lieutenant of the watch, and it was not the captain's duty to be there at the time or to interfere. Similarly, in *The Mentor* (1799), 1 C. Rob. 179, it was held that the admiral of a station could not be responsible for damages for wrongful seizure, if he was not privy to the fact.

In *The Crouch Belle* (1906), not reported, the admiral superintendent of a Government dockyard was held not to be liable for damage done to a vessel by its being placed in an unsafe berth, there being no evidence that he was directly responsible, but judgment was given against the officer who actually directed the vessel to be so berthed. Compare the similar case of *Wright v. Lethbridge* (1890), 63 L. T. 572; 6 Asp. M. L. C. 558. It may be observed that in *R. v. Williams* (1884), 9 A. C. 418; 53 L. J. P. C. 64, the Government of a colony, which had the control and management of a harbour, was held liable under a local Act for damage to a vessel, due to a lack of reasonable care.

In *O'Byrne v. Marquis of Hartington* (1877), Ir. R. 11 C. L. 445, the Chief Secretary and Under-Secretary for Ireland, who had given directions to have a meeting prevented, were held not to be responsible for any illegality in the method in which those directions were carried out by the Chief Commissioner of Police and his subordinates, since the latter were not servants of the Secretaries but of the Crown.

Reference may be also made to the collision cases, which are dealt with above, p. 525.

Actions against the heads of various Government Departments are dealt with under the appropriate headings in Book I. of this work. The Secretary of State in Council of India stands in a special position in this respect. See above, p. 27.

The principle, of course, would not apply where the tortfeasor was a servant actually employed by the servant of the Crown himself, and they were not co-servants of the Crown, as in *Lord North's Case* (1557), Dy. 161 a.

A Servant of the Crown is not personally liable under Contracts made by him as such on behalf of the Crown, unless he expressly renders himself so liable.

Traces of the former portion of this proposition appear in *Graham v. Stamper* (1692), 2 Vern. 146; but it is expressly laid down in *Macbeath v. Haldimand* (1786), 1 T. R. 172, an action against a Governor of Quebec for payment in respect of goods supplied to him for the use of the Government, where Ashhurst, J., observed: "Great inconveniences would result from considering a governor or commander as personally responsible in such cases as the present. For no man would accept of any office of trust under Government upon such conditions. And, indeed, it has frequently been determined that no individual is answerable for any engagements which he enters into on their [*i.e.*, the Government's] behalf." The same result was arrived at in *Unwin v. Wolseley* (1787), 1 T. R. 674, an action of covenant on a charter-party made between the plaintiff and the defendant, who was the commander of a King's ship, on behalf of His Majesty. This latter decision seems to be right in principle, and to be preferred to the contrary decision in *Cunningham v. Collier* (1785), 4 Doug. 233, which was not cited to the Court. So the captain of a troop, for which forage had been furnished by the orders of his clerk, was held not to be personally liable, whether he had received money for the purpose of payment or not, since it was notorious that he had contracted on behalf of the Government (*Rice v. Chute* (1801), 1 East, 579; compare *Myrtle v. Beaver* (1800), 1 East, 135); and the principle was approved in *Allen v. Waldegrave* (1818), 8 Taunt. 566, 574, and *Thompson v. Pearce* (1819), 1 B. & B. 25.

Several of the earlier cases were considered in *Gidley v. Lord Palmerston* (1822), 3 B. & B. 275, an *assumpsit* against the Secretary at War by a retired clerk of the War Office for his retired allowance. It was held that the action would not lie; (*i.*) on the ground that there was no duty as between the defendant and the plaintiff, the

defendant having received the money as money of the Crown, for which he was responsible to the Crown alone; and (ii.) on the general principle enunciated above.

The point again arose in *Palmer v. Hutchinson* (1881), 6 A. C. 619; 50 L. J. P. C. 62, an appeal from the Supreme Court of Natal in a suit against the Crown's Deputy Commissary-General for Natal, representing the Crown Commissariat Department, to recover, *inter alia*, certain moneys as the price or hire of certain waggons and oxen and for the carriage of certain goods. It was held by the Judicial Committee that the defendant could not be sued, either personally or in his official capacity, upon a contract entered into by him on behalf of the Crown Commissariat Department. In *Wright & Co. v. Mills* (1890), 60 L. T. 887; 63 L. T. 186, it was held, on similar grounds, that the Agent-General of a Colonial Government in this country could not be sued personally in respect of a contract entered into by him on behalf of his Government.

The form of plea on behalf of the defendant in such actions was discussed in *O'Grady v. Cardwell* (1873), 20 W. R. 342; 21 W. R. 340, where similar principles were again laid down.

On the same principle, where a contract is made by a public servant acting on behalf of the Crown, he is not liable to the other party for a breach of an implied warranty of his authority to enter into the contract. (*Dunn v. Macdonald*, [1897] 1 Q. B. 555; 66 L. J. Q. B. 420.) In this last case the claim arose out of the employment of the plaintiff under the Crown. That the employment of servants of the Crown is during pleasure only has already been pointed out at length above, p. 354. It follows that, unless express personal liability is shown (see below, p. 645), servants of the Crown cannot be sued in respect of a breach of a contract of service by their subordinates. See *Worthington v. Robinson* (1897), 75 L. T. 446, an action by a supervisor of Inland Revenue against the Commissioners for damages for wrongfully reducing him in rank.

In view of these cases, it would seem that the statement of Sir William Grant, M.R., in *Priddy v. Rose* (1817), 3 Mer. 86, 102 (with which compare *Row v. Dawson* (1749), 1 Ves. Sen. 331), that "where a public officer has in his hands money issued by the Government for the use of an individual, it is clear that a suit may be maintained against the officer for the recovery of such money; for it is his duty towards the Crown, as well as towards the individual, to apply the money to its destined purpose" is not correct as a general proposition. That funds voted by Parliament for the public service are not trust funds in the hands of the Secretaries of State who receive them from the Treasury, and that the Court of Chancery has therefore no juris-

diction to take any account of the application of such funds, appears from *Grenville-Murray v. Earl of Clarendon* (1869), L. R. 9 Eq. 11 ; 39 L. J. Ch. 221, a bill against the Secretary of State for Foreign Affairs and the Permanent Under-Secretary of the Department for an account and payment of money alleged by the defendant to be due to him out of such funds.

It may be observed that Lord Mansfield, C.J., stated in *Whitbread v. Brooksbank* (1774), 1 Cowp. 66, 69, that an action for money had and received did not lie against a Revenue officer to recover an overpayment. See also *Greenway v. Hurd* (1792), 4 T. R. 553. *Geraldes v. Donison* (1816), Holt, N. P. 346, which has been cited as being to the contrary effect, seems to have nothing to do with the matter.

But where exorbitant fees were charged by a Customs officer, it was held that they could be recovered (*Stevenson v. Mortimer* (1778), 2 Cowp. 805), and such an officer was held liable for damages for non-feasance in the exercise of his office, where he refused to sign a bill of entry without payment of an excessive duty, in *Barry v. Arnaud* (1839), 10 A. & E. 646 ; 9 L. J. Q. B. 226 ; and *Barrow v. Arnaud* (1846), 8 Q. B. 595.

Ridley, J., sought to distinguish *Gidley v. Lord Palmerston* (1822), 3 B. & B. 275, and *Dunn v. Macdonald*, [1897] 1 Q. B. 555 ; 66 L. J. Q. B. 420, in *Graham v. His Majesty's Commrs. of Public Works and Buildings*, [1901] 1 K. B. 781 ; 70 L. J. K. B. 860, where it was held that an action would lie against the Commissioners for damages for breach of a contract entered into by them for the erection of a public building. This case has been criticised at length above, p. 81, where reasons are given for thinking that it was wrongly decided.

The remedy, if any, in such cases is not by action against the servant of the Crown, who made the contract, but by petition of right, or perhaps, under certain circumstances, by mandamus. These remedies are fully discussed in Book III. and in Book I. Chapter III. of this work respectively.

On the other hand, a servant of the Crown, who makes a contract, may so make it as to render himself expressly liable. This was recognised in *Dunn v. Macdonald*, [1897] 1 Q. B. 555 ; 66 L. J. Q. B. 420, where Lord Esher, M.R., said : "No action lies against a public servant upon any contract which he makes in that capacity, and an action will only lie on an express personal contract. It cannot be pretended in this case that the defendant made any express personal contract." Lopes, L.J., said : "Unless there is something special, which would be evidence of an intention to be personally liable, an agent acting on behalf of a [*quære* the] Government is not liable for a breach of a contract made in his public capacity, even though he would, by the terms of the contract, be bound if it were an agency of

a private nature"; and Chitty, L.J., said: "The contention is that the Crown agent is personally liable on a contract warranting his authority as agent. That a Crown agent may enter into an express contract of that kind cannot be doubted, and on such a contract he would be personally liable."

But the personal liability must be express, and will not be easily presumed. Thus, it was held in *Carter v. Hall* (1818), 2 Stark. N. P. 361, that a purser's steward, on a King's ship, one of a class which was entitled to the pay of an able seaman from the Crown, but who usually received pay from the purser under a private contract with him at a rate calculated in a generally recognised fashion, was not entitled to recover wages for his services as upon an implied contract. See also *Auty v. Hutchinson* (1848), 6 C. B. 266; 17 L. J. C. P. 304. But on the other hand, where a cook, not in Government service, agreed with the captain of a King's ship to serve as captain's cook on the latter's undertaking to pay him certain wages beyond his Government pay as an able seaman, it was held that there was a sufficient consideration to enable him to sue for such wages. (*Clutterbuck v. Coffin* (1842), 3 Man. & G. 842; 11 L. J. C. P. 65.) But it appears that the point whether the plaintiff's services should not be held to have been rendered to the Crown and not to the defendant, was not open to the defendant on the motion for a non-suit, and was therefore not considered by the Court. Reference may also be made to *Thompson v. Pearce* (1819), 1 B. & B. 25; *Knowles v. Maitland* (1825), 4 B. & C. 173, and *Van Rooyen v. Vander Reit* (1838), 2 Moo. P. C. 177.

In the recent case of *Samuel Brothers, Ltd. v. Whetherly*, [1907] 1 K. B. 709; 76 L. J. K. B. 357, affirmed, [1908] 1 K. B. 184; 77 L. J. K. B. 69, it was held that where orders are given by or on behalf of the commanding officer of a volunteer corps personally for goods for the use of the corps, the commanding officer is personally liable for the price, and, on his death before payment, his personal representatives are liable, although the property in the goods has passed to the succeeding commanding officer. The decision turned upon the Volunteer Acts and Regulations, which were held, under the circumstances, to render the commanding officer and his representatives liable.

The evidence necessary to establish personal liability in such transactions was discussed in *Keate v. Temple* (1797), 1 B. & P. 158, an action by a slopseller against a naval lieutenant, and in *Rice v. Everitt* (1801), 1 East, 583 n., and *Prosser v. Allen* (1819), Gow, 117, actions by a forage merchant and an accoutrement maker respectively against the colonel of a regiment, the question in each case being whether the plaintiff had looked to the credit of the fund under the officer's control or to the officer's personal credit.

CHAPTER II.

EXCEPTIONS AND LIMITATIONS.

CERTAIN statutory provisions with regard to actions against servants of the Crown require notice here.

Where, on the trial of an information or complaint for the condemnation of goods seized as forfeited under any Act relating to Inland Revenue, judgment is given for the claimant, if the Court or judge certifies that there was probable cause for making the seizure, no officer or person who made or assisted in making the seizure shall be liable to any civil or criminal proceeding on account of the seizure or detention of the goods. Where any civil or criminal proceeding is brought against any officer or person employed in relation to Inland Revenue on account of the seizure or detention of any goods, and a verdict or judgment is given against the defendant, if the Court or judge certifies that there was probable cause, the plaintiff shall not be entitled to any damages besides the goods seized or their value, nor to any costs, and the defendant shall not be liable to any punishment. (Inland Revenue Regulation Act, 1890, s. 29, below, p. 742.) So the Customs Consolidation Act, 1876, s. 267 (p. 727).

As to the defence of actions against collectors, see the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 20 (7), (8).

Under the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), ss. 28, 29, subject to the provisions of sects. 23 and 24 of the Act as to the award of damages in certain cases by the Admiralty Court, no damages shall be payable, and no officer or local authority, as defined in sect. 21, shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of the Act. The Secretary of State or chief executive authority, as defined in sect. 26, shall not be responsible in any action or other legal proceeding whatsoever for any warrant issued by him in pursuance of the Act.

A similar provision is contained, with respect to officers and local authorities, in the Pacific Islanders Protection Act, 1872 (35 & 36 Vict. c. 19), s. 20. (See *Burns v. Nowell* (1880), 5 Q. B. D. 444; 49 L. J. Q. B. 468.)

“Every prison officer, while acting as such, shall, by virtue of his appointment, have all the powers, authorities, protection

and privileges of a constable." (Prison Act, 1898 (61 & 62 Vict. c. 41), s. 10.) See also *Butt v. Newman* (1819), Gow, 97. As to the meaning of "prison officer," see sect. 14 (2) of the Prison Act, 1898, and the Prison Act, 1865 (28 & 29 Vict. c. 126), s. 10. The Constables Protection Act, 1750 (24 Geo. II. c. 44), s. 6, provides that no action is to be brought against a constable for anything done in obedience to any warrant under the hand or seal of a justice, until demand and refusal of a copy of the warrant as therein mentioned.

Several of the cases relating to the liability of the governor of a prison will be found cited in *Demer v. Cook* (1903), 88 L. T. 629, and add to these *Aaron v. Alexander* (1811), 3 Camp. 34; *M'Combe v. Gray* (1879), 4 L. R. Ir. 432; *Moone v. Rose* (1869), L. R. 4 Q. B. 486; 38 L. J. Q. B. 236; and *Thomas v. Hudson* (1845), 14 M. & W. 353; 14 L. J. Ex. 283.

Freedom from arrest for debt in the case of seamen and marines is provided for by sects. 97, 98 of the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), subject as therein mentioned, and soldiers of the regular forces cannot be taken out of the service by civil process or compelled to appear in person before a Court of law except on account of a charge of, or conviction for, crime, or on account of any debt or sum exceeding 30*l.* over and above all costs of suit, by sect. 144 of the Army Act, 1881 (44 & 45 Vict. c. 58), as amended by sect. 4 (4) of the Army (Annual) Act, 1882 (45 & 46 Vict. c. 7), subject as therein mentioned.

The limitation of actions against servants of the Crown in respect of their public duties is now governed generally by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, which is as follows: "Where after the commencement of this Act, any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect:

- "(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof:
- "(b) Whenever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client:

“(c) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action :

“(d) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the Court may award to the defendant costs to be taxed as between solicitor and client.

“This section shall not affect any proceedings by any Department of the Government against any local authority or officer of a local authority.”

By sect. 3, the Act does not apply to any proceeding, in respect of the matters above referred to, under an Act of Parliament which applies to Scotland only, and contains a limitation of the time and other conditions for the proceeding.

As to the method of calculating the time in actions against revenue officers for seizure, see *Magrave v. Gilbourne* (1794), Ridg. L. & S. 135, and *Wilchkin v. Gahan* (1795), Ridg. L. & S. 591.

The statute was held to apply to an action for damages against a regiment of volunteers and its commanding officer in *Wilson v. 1st Edinburgh City Royal Garrison Artillery Volunteers* (1904), 7 F. 168.

Sect. 1 of the Act apparently does not affect the general principle as to Crown costs so as to make costs payable by or against the Crown where they would not otherwise be payable. (See above, pp. 613, 621.) It seems only to affect the *quantum* of costs in cases where they would be payable apart from the statute.

The Act, by sect. 2 and Schedule, must be taken apparently to repeal, *inter alia*, sect. 20, sub-sects. (1) to (6) inclusive, of the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), though, as drawn, it fails to effect its apparent purpose.

In the case of proceedings in respect of matters under the Army Act, 1881 (44 & 45 Vict. c. 58), sect. 170 of that Act, as amended by the Army (Annual) Act, 1894 (57 & 58 Vict. c. 3), s. 7, contains provisions similar to those of the Public Authorities Protection Act, 1893,

s. 1, sub-ss. (a) and (c). It further provides that such proceedings, and also actions against a member or minister of a court martial in respect of a sentence of such court, or anything done by virtue or in pursuance of such sentence, shall be brought in one of the superior Courts of the United Kingdom (which Court shall have jurisdiction wherever the matter complained of occurred), or in a supreme Court in India, or in any Colonial Court of superior jurisdiction, if the matter occurred within the jurisdiction of such Court, and in no other Court whatsoever.

APPENDIX.

Statutes and Rules.

33 HEN. VIII. c. 39.¹

The Byll for the establishment of the Courte of Surveyo^rs.

1—35. [1—49 (Ruff.), *repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125).*]

36. AND where di^vse and sondry obliga^cõns and specialties heretofore have been made to di^vse p^{er}sons, part of theym to the use of King Henry the vijth father of o^r nowe moost gracious soveraunde [lyeg²] lorde, and p^{ar}te of theym to the use and behoffe of o^r said [nowe²] soveraigne lord; be it enacted by the King o^r soveraigne lorde w^{ith} the assent of the lordes s^{pi}uall and temporall and the cõmons in this present Pliament assembled, and by thauthuctoritie of the same, that all obliga^cõns and specialties whiche aft^{er} the first daie of Maie next cõmyng shalbe made for any cause or causes towching or in any wise cõfēnyng the King^e moost royall Ma^{tie} or his heyres, or to his or theyr use cõmoditye or behoofe, shalbe made to his Highnes and to his heires King^e in his or their name or names by these wordes, Dno Regi, and to non other p^{er}son or p^{er}sons to his use, and to be paid to his Highnes by these wordes, Solvend eidem Dno Regi, hered vel executorib^{us} suis, wyth other wordes used and accustumed in cõmon obliga^cõns; and that all suche obliga^cõns and specialt^{ies} so to be made, shalbe good & effectuall in the lawe to all p^{ur}poses and intent^e and shalbe of the same nature kinde qualitie force and effect to all intent^e and purposes as the wryting^e obligatory takyn and knowledged according to the Statute of the Staple at Westm^{onasterie}, hath at any tyme before the making of this p^{re}sent Act been takyn used e^xcēysed and executed agenst any [laye²] p^{er}son or p^{er}sons; any lawe usage or custome to the contrary therof notw^{ith}standing. And that all suche obliga^cõns and specialties, the dett whereof being not payed nor contented in the li^{fe} of the King, shall come remayne and bee to the heires or executo^{rs} of the King at the free libtie disposi^cõn assignement and appointment of the same King to whome suche obliga^cõns or specyalties shalbe made as is aforesaid; and if any p^{er}son

Bonds, &c. made to certain persons to the King's use;

All bonds to the King shall be made to him in his own name, and shall be in the nature of statutes staple, and payable to the King and his heirs.

No bond to the King's use in the name of third persons;

¹ From the original Act in the Parliament Office.

² printed copies omit.

or psons in his or their owne pper pson or psons after the said first daie of Maye, make or take any obligaçon or obligaçons to the use of the Kinge Ma^{te} or of his heyres Kinge, otherwise than is byfore expressyd, that then suche pson or psons only that shall so offende contrary to this presente Acte, for his or ther so doing, shall have and suffer suche ymprisonment as shalbe assessed and adjudged by the King or his [moost¹] honorable counsaile dailie attendaunte uppon his Highnes moost royall pson. And that all sutes to be made after the first daie of Apryll next cūmyng for the recovyē of or for any of the Kinge dette in any the Kinge courtē mencýoned in this Acte, of or uppon any obligaçon or specyaltie dated or delyvered byfore the making of this p^sent Acte or which shalbe dated and delyved to the King or to his use afore the secunde daie of Maye next cūmyng, shalbe taken sued and pursued in the name of the King and in the name of non other person or persons, to whatsoev^r pson or psons the saide obligaçons or specialties or any of theym be have been or shalbe made to the Kinge use; and that all sutē p^sees judgementē decrees and execuçons hereafter to be takyn pursued or gyven for the King in any the Kinge courtē mencýoned in this Acte of for or uppon any of the same obligaçons last afore mencýoned, shalbe of the same or like strenght force effect and intente in the lawe to all p^rposes only agenst all and all manⁿ suche pson and psons as been bounden in suche obligaçons or specialties as well s^puall as temporall, as agenst their heyres successours executors and administrato^{rs} and evy of theym, and agenst non other, as wrytinge obligatories taken and knowledged according to the Statute of the Staple at Westm, at any tyme before the making of this p^sent Acte, have been used to be takyn excýsed and executed agenst any laye pson or psons. And that the King in all sutē, hereafter to be takyn in or uppon any obligaçon or specialties made or hereafter to be made to the King, or any to his use, shall have and recov^r his just dette costē and damages, as other cōmon psons use to do in sutē and pursutē for their dette. And that all suche sutē as nowe be depending in the name of any cōmon pson to his Graces use, wherof no verdyte is or byfore the feast of Ester next cūmyng shalbe given or passed, or no exigent awarded, shall abate be voyed and of non effect; and neverthelesse the King by thau^cr^tie aforesaid, shall have his sute and remedy for the said dett so being in accion and p^sees in forme as is aforesaid, in any of the courtē in this Acte mencýoned; any thing in this Acte to the contrary therof notw^tstanding.

process on
existing or
future bonds;

costs and
damages to
the King;

suits of third
persons shall
abate.

Suits for the
King's debts
shall be in the
Courts of
Exchequer, or
other Courts
where they
shall be due;

37. AND . . . that all and evy sute and sutes whiche hereaft^r shalbe had made or takyn of for or uppon any dett or duties whiche heretofore hath growen or be due, or that hereafter shall growe or be due to the King in the severall offices and courtē of his Exchequer, duchye of Lancast^r, augmentaçons of the revenues of his crowne, surveyo^{rs} gen^lall of his manⁿs landes and teñtē, maister of the wardes and lyveryes and court of the first frutē and tenthes or in any of theym, or by reason or au^cr^tie of any of theym, shalbe seavally sued

in suche one of the said courtē and offices, in the whiche court and office or by reason of the whiche court and office the same dett or dutye did fyrst growe or become to be due or hereaft shall growe or become due, or in the which office or court the recognisaunce obligacōn or specialtie is or shalbe or remayne; and evy such sevall sute and sutes shalbe made in evy of the said sevall offices and courtē under the sevall seales of the said severall courtē by capias, extendi facias, subpena, attachement and proclamacons of allegeaunce if neede shall require, or eny of them, or otherwise as unto the said sevall courtē shall be thought by their discrecons expedient for the spedye recovye of the Kingē debte: And that the said courtē of the Eschequier and all and evy of the said courtē shall have hole and full auctoritie and power to here and determyne all and evy suche sute and sutes as hereafter shalbe taken comēced and pursued for thentent above spified, and therupon to awarde make and doo execucon by & upon the body landes and goodes of the partye or parties that so shalbe condemned accordingly; and also shall have fulle power and auctoritie to heare & determyne all and alman of dett detynues trespasses accompte reconyngē waast disceyte neeligence defaultē contemptē complayntē riotte querrelle sute striffe controvsies forfaitures offence and other thinge whatsoever they shalbe, whiche hereafter shall growe be moved stirred procured pursued or arrise, in for or upon eny matier cause or other thing assigned comytteed or appoynted, or hereafter to be assigned comytteed or appoynted to the sevall direccions orders and govnaunce of the same corte or any of them, or for or upon eny man of thing or thinge whiche may or shall towche or in any wise concerne the same wheryn the King shalbe onelie ptie, and also alman of state for terme of yeres betwene partie and ptie concernyng the pmysses; and to correcte and punyssh by their discrecons all and evy pson and psons whiche before them shalbe convicted of eny of the pmysses according to the nature qualitie and quantitie of his or their offence or offences cause or causes matier or matiers; all and almaner of treasons murders felonies estate righte titles and interestē, aswell of inheritaunce as of frehold other thenne joynters for terme of life, oonly excepted and always reserved.

process for recovery thereof:

power of the Court of Exchequer and all other courts to determine all such suits, and all matters relating to them:

Except criminal cases and estates of freehold.

38. [58 (Ruff.), *repealed by the Statute Law Revision Act, 1863* (26 & 27 Vict. c. 125).]

39. AND . . . that evy of the said courtē shall have full power and auctoritie by force of this Acte to sett suche fynes penalties and amerciamente upon parties shireffe officers and other psons, for his & theire defaultes contemptē neeligence or mysdemeanors, as unto the said courtē or unto any of them shalbe reasonably considered and thought expedient. And that all and evy tryall and triallē of all and alman sutes bille pleyntē informacons declaracons compleyntē aunswers replicacons allegacons causes matiers and issues, or any of them, to be pursued made or tryed in the said sevall corte or any of them, shalbe made and tryed by due examynacon of witnes writinge prooffe, or by suche other wayes or meanes as by the said sevall courtē or by any of them shalbe thought expedient. And that all

Courts empowered to fine sheriffs, parties, &c.

Trial by witnesses, &c. Judgements.

and evy suche judgement and judgemente decree or decrees examynaçon and examynaçons shalbe goode pfitte and in fulle strength force and effect in the lawe to all intente construccions and purposes.

For discharging bonds, &c. to the King without special warrant;

40. AND where diverse and sundry psons stond bounden to the Kinge Highnes in divse greate and notable somes of money by recognisaunce or other bondes in the said sevall courtē for dettē due to the Kinge Highnes, aswell for the purchase of landes and woodes and perfo'maunce of condiçions, as also for divse and sundry other causes; and albeit the same psons have well and truely satisfied contented and paide the same debttē, or pfourmed the condiçions of the same recognisaunce or other bondes, yet the same recognisaunce or other bondes cannot be made voide w^oute the Kinge especial warraunte, whiche shulde be much unquyetnes to the Kinge Majestie, and also vāy chargeable to his Graces subjecte, to sue to his Highnes from tyme to tyme for the same; in consideraçon whereof, and forasmoche as the said psons being so bounden by recognisaunce or in other bondes may by diverse casualties lose their acquitaunce, wherby great daungier and perill may growe to them their heires executo's and successours: Be it therfore enacted by the King our sovaigne lord, with the assent of the lordes spirituall and temporall and the commens in this p'sent Pliament assembled and by auctoritie of the same, that upon the sight of the acquitaunce made or to be made for the payment of the said dett or dettē or som or sommes of money growen or to be growen, or due and sufficient prooffe made or hereafter to be made before the said sevall hede officers for the tyme being of the said sevall courtē, as the case shall rise or growe, or if the condiçon of the same recognisaunce or bonde be pfo'med or kept, that then evy suche severall hede officer for that recognisaunce taken or to bee taken by hym or any of his pdecesso's, or [for¹] any other bonde for tyme being wⁱⁿ his charge and cure, shall have fulle power and auctoritie to cancell and make voide the said recognisaunce or other bonde, calling to hym suche of the same co'te as to hym or them shall seme moste convenient for the cancellaçon of the same recognisaunce or bonde.

Such cancelling a sufficient discharge.

41. AND . . . that the same cancellaçon so made, shalbe a sure and sufficient discharge of the same recognisaunce or other bonde, to all and evy such pson or psons as doo or shall stande bounden in the same recognisaunce or bonde so cancelled ageynst the Kinge Highnes his heires executo's and successours for ever.

Discharging recognizances for appearance, &c.

42. AND . . . that the same sevall hedd officers for the tyme being in evy of their said sevall co'te shall have full power and auctoritie to discharge cancell or make voide by his or their discreçon all and singler recognisaunces now made or hereafter to be made in the said co'te, for any apparance or other contempte; and that the same hed officer or officers and the pties so bounden and to be bounden to be discharged ageynst the King or said sovaigne lord his heires executo's and successours for the cancellaçon of the same recognisaunce.

43. AND where the Kinge Majestie sithen then the making of the same estatute in the said xxvijth yere of his noble reigne, of his own mere mocion libalitie and benygnytie hath freely given and graunted by his sundry tres patent^e under his greate seale of England, unto diverse and sundry of the nobles and lordes as well sp^uall as temp^all of this his realme, and also unto di^vse and many other p^{er}sons and bodies politike to their heires or successo^{er}s, and to the heires of their bodies, or for terme of life or lives, di^vse and many sundry hono^{ur}s castelle mano^{er}s landes teⁿte rectories pen^{er}cons por^{er}cons and other hereditament^e whiche then were in the order gou^{er}naunce and survey of the same courte of thaugmenta^{ti}ons of the revenues of his Graces crowne, or oute of eny other of the said sevall co^{ur}te, ref^{er}ving unto his Majestie his heires and successours by the same tres patent^e one yerely rent in the name of one tenthe, or the tenth parte of the yerely value of the same p^{er}mysses, or any other rent paia^{ble} and to be paide in the same courtes, or to the officers of the same co^{ur}te deputed and assigned for the same, at one certen feast or day in the same tres patent^e men^{ti}oned and declared; whiche said p^{er}sones so advaunced notw^{ith}standing they have sithen and after the making of the same tres patent^e peasibly enjoyed the same mano^{er}s landes teⁿte and hereditament^e so given, and therof have quietly p^{er}ceived and taken the issues revenues and p^{ro}fitte therof; yet nev^{er}theless di^vse of the same p^{er}sons have not at the dayes and feaste assigned and lymtyed unto them in the same tres pattent^e, nor yet in long tyme after the same dayes and feaste of payment therof, contented and paide in the same courte, or to the officers of the same courte assigned and deputed for the same, the said yerely rent or rent^e so ref^{er}ved to the Kinge Highnes, contrary to their dueties and against all reason and good conscience: IN CONSIDERA^{ti}ON wherof be it therefore nowe ordeyned enacted and establisshed by the assent of the Kinge Majestie the lordes sp^uall and temp^all and the cōmons in this p^{re}sent Pliament assembled and by the auctoritie of the same, that if any p^{er}son of what estate degree or condi^{ti}on soev^{er} he be, or body politike, to whom the Kinge Majestie hath by his tres patent^e under his greate seale of Englande, or under the greate seale of the same courte of [augmenta^{ti}ons¹] given or granted, or hereafter shall give or graunte w^{ith} like ref^{er}va^{ti}on of rent or rent^e, any mano^{er}s landes teⁿte rectories or other hereditamēte whatsoev^{er}, whiche were or hereafter shalbe in the order gov^{er}naunce and surveye of the same courte, or any of them, to be had to them and their heires or successours, or for any other estate of inheritaunce, or for terme of life or lives, yelding and ref^{er}ving to the same our said sovaig^{ne} lord the King his heires [and²] successours, one yerely rent, at one certen day or feaste in the same tres patent^e exp^{re}s^{se}d men^{ti}oned and declared, and to bee paide into the same courtes, that if the same p^{er}sons bodies politicke their heires (2) successours or assignes or any of them doo not truely content or pay or cause to be contented or paide unto the treasurer of the said sevall co^{ur}te, or to the gen^{er}all or p^{ar}ticular receivo^{er} of the same sevall co^{ur}te, deputed and assigned for the same for the tyme being, to the use of the Kinge Highnes, at the day or

Recital of grants by the King, since the making of St. 27 Hen. 8, c. 27, of lands, &c., reserving a tenth of the yearly value as rent payable yearly on a day certain;

forfeitures nomine poenae for default in payment of such rents, viz., if for three months one quarter's rent: if for six months half a year's rent, and a year's rent for every subsequent half-yearly default.

¹ augmentation printed copies.

² or printed copies.

feast lymtyed by the same tres patentē, or wⁱⁿ three monethes next and immediatly after the same day or feast of payment therof, all suche sommes of money whiche ben or hereafter shalbe due refved to the Kingē Majestie his heires and successours, by the same tres patentē or by any of them, or make sufficient tendre thereof to the said treasurer or genall or pticuler receivo^r, that then evy of the same psons bodies politike their heires successo^rs or assignes for lak and defaulte of payment of the same rent, to forfaitē and loose to the Kingē Majestie his heires and successours as mouche money as the fourthe pte of the same rent so refved or hereafter to be refved for one yere, doith or shall amounte unto, for and in the name of one payne ov and above the same rent refved or hereafter to be refved: And if it happen the same psons bodies politike their heires successours or assignes or any of them doo not wⁱⁿ one half yere next after the day or feast exp^{ssed} in the same tres patentē, content or pay or laufully tendre unto the same treasurer or genall or pticuler receivo^r to the use of the Kingē Majestie his heires or successours, as well the said yerely rent so refved or hereafter to be refved, as also the said som of money forfeited for and in name of a payne, that then the same psons bodies politike their heires successours or assignes so offending, shall forfaitē and lose to the Kingē Majestie his heires and successours so moche money as the moytie [or¹] halfe deale of the same rent refved or to be refved for one yeere doith or shall amounte unto, ov and above the said rent refved or to be refved; and [so²] to forfaitē and lose for evy half yere after, so moche monie as the hole rent refved or to be refved for one hole yere doith or shall amounte unto, until the same rent [so²] refved or to be refved & the arrerage of the same, and also the said sommes of money so forfeited and loste for a payne, ben unto the same treasurer or genall or pticuler receivo^r, truely satisfied contented and paide to the use of the Kingē Highnes his heires & successours.

Distress and
process for
such rent and
forfeiture.

44. AND . . . that it shalbe liefull to the same treasurer and genall or pticuler receivo^r to distreyn as well for the same rent so refved or to be refved, and for tharrerage of the same, as also for the said sōmes of money so forfeited or to be forfeited and loste, for and in the name of the peyne aforsaide; and also the hedde officer or officers of either of the same courtē for the tyme being, upon certificate to hym made or to be made of the same defaute and contempte, shall and may awarde such processe oute of the same courtē ageynst the same offender for not payng of the said rent so refved or to be refved, and also for the same somes of money forfeited and to be forfeited by this Acte as by his or their discreçōn shall seme convenient.

On payment
of rent to
treasurer, &c.,
he shall sign
a receipt, if
tendered
without fee:

45. AND . . . that if any pson or psons hereafter make lauffull payment to any of the said treasurers or genall or pticuler receivo^r of any of the same co^{rtē}, deputed and assigned for the same, of any sōm or sōmes of monie due to the Kingē Highnes his heires or

¹ and printed copies.

² printed copies omit.

successours for eny yerely rent or tenthe, and upon or after suche payment offer unto the same treasurer or genall or particuler receiver, one lafull and sufficient acquitaunce redy made to be assigned by the same treasurer or genall or pticuler receivo^r, witnessing the receipt of the said som or sōmes of money so paide, that then the said treasurer genall or pticuler receivo^r shall w^t his owne hande assigne the same acquitaunce, w^toute taking any fee or rewarde for making of the same acquytaunce, upon payne to forfayte and lose for evy tyme offending contrary to this Acte forty shillinge, one moitie wherof to be to the Kinge Highnes, and the other moitie to the ptie that will pursue for the same. And if the parties whiche hereafter shall happen to pay to the same treasurer or genall or pticuler receivo^r, any suche somme or sommes of money and doo not bring an acquytaunce with hym to be signed as is beforesaid, that then if the same treasurer or genall or pticuler receivo^r, upon request to hym made, shall make and deliver unto the same partie one sufficient acquitaunce testifying the same receipte, that then the same treasurer or genall or pticuler receivo^r or eny of his clerke, shall not receive or take of the same partie for the making of the said acquitaunce not above foure pence, upon paine to forfayte for every suche acquitance twenty shillinge for whiche he or they shall happen to take above the said som of iiij d. to be recoved as is beforesaide, that is to say, thone moitie therof to the use of the Kinge Highnes of his heires and successours, and the other moytie thereof to the ptie that wille pursue for the same. And be it also enacted, that the same acquitaunce shalbe a sufficient discharge according to the tenno and effect of the same.

Penalty 40s.

or if no receipt tendered shall give acquitance on a fee of 4d.

Penalty 20s.

Such acquitance sufficient.

46. AND . . . that if any of the same genall or pticuler [receivo^rs,¹] whiche nowe be or hereafter shalbe w^tin any of the said courtē, happen to pay to any pson or psons any annuytie pencion or other rent, that then if the same pson or psons upon the receipt thereof deliver unto the same genall or pticuler receivo^r one sufficient and lawfull acquitaunce sealed and signed testifying the same receipte, that then the same genall or pticuler receivo^r shall receive the same acquitaunce w^toute taking or receiving any fee or rewarde for the making of the same: And if the same ptie to whom the said genall or pticuler receivo^r hath so contented and paide any suche annuytie pencion or rent, do not bryng w^t hym one sufficient acquitaunce signed and sealed, testifying the receipte of the same money, by reason whereof the same genall or pticuler receivo^r by himself or his clerke maketh one acquitaunce for the receipte of the same annuytie pencion or rent, that then the same receivo^r or his clerke shall not receive or take for the making of any suche acquitaunce whiche he shall so happen to make not above foure pence, upon payne to forfeite for evy suche acquitaunce whiche he shall happen to refuse, being redy made and offered to be delived to hym as is abovesaide xx s. and for evy acquitaunce which he shall hereafter happen to make for any of the paymentē aforsaid, and to receive for the making of the same acquitaunce above the said soume of iiij. d. to forfayt xx s. the one moytie to be to the King and thother moitie to the ptie that will

On payment of annuities, &c. by receivers, they shall accept receipts tendered by the annuitants without fee, or on failure give a receipt on fee of 4d.

Penalty 20s.

¹ receiver printed copies.

Rewards not exceeding 4*d.* per pound.

sue for the same. And also that the same gen^{all} or p^{ticuler} receivo^rs or their deputies whiche hereafter shall happen to pay any suche annuyte pen^{con} or rent, shall not reteygne or take of the partye to whome he shall happen to paye the same in the waye of rewarde or otherwise not above the some of iiij. d. for every pounce, which the same generall or p^{ticuler} receyvo^r shall so happen to paie, upon paine [or ¹] forfait vj. s. viij d. for every penny which he or they shall happen to receyve above the said some of iiij d. for every pounce which he or thei shall so happen to paie; the oone moitie of the same forfeiture to be to the King and thother moitie to the partie that will sue for the same. And that all the said sute con^{cerning} the said forfeitures maye be com^{enced} and pursued by bill informacion or action, in which sute non esson protection or wager of lawe to be admyt^{ted}.

Fees to auditors, &c. for inrolments.

47. AND . . . that if eny person or persones hereafter happen to tendre or offer unto eny of the audito^rs of the same severall court^e for the tyme being, any of the Kinge tres patent^e decrees of any of the same severall court^e graunt^e indentures of leases as well for terme of yeres as for terme of lif or lyves, to be inrolled before the same audito^r, according to his office; that then the same auditour upon the same tender or offer shall enroll the same, or so moch of the same tres patent^e decrees graunt^e or indentures as shall apperteign to his said office. And if eny of the same audito^rs or eny of their clerke, or eny other to their use, or to the use of any of them, receyve and take for the enrollement of eny of the same tres patent^e decrees graunt^e or indentures, or for the allowaunce of the same above the some of iij s. iiij d. that then the same auditour or his clerke so offending shall forfeit vj s. viij d. for every penny, which the same audito^r or eny of them shall happen at eny tyme hereafter to receive contrary to the forme aforesaid, the oon moitie of the same forfeiture to be to the Kinge Highnes and the other moitie to him that will sue for the same by such maner and fourme as is aforesaid.

Auditors shall give notice of audits;

48. AND . . . that every auditour of every of the said severall court^e yerelie in every countie w^{thin} their sayd severall lymyt^e, by the space of xx daies or more before their audit, shall p^{elayme} and declare in iiij severall market^e or other places, the place and daies where and when thei will kepe their severall audit^e in the same shire, upon payne to forfeit for every tyme ⁽²⁾ doing the contrarie v li. thone moitie wherof to be to the Kinge Highnes, and thother moitie to the partie that will sue for the same in fourme aforesaid: And that also every of the auditours of the severall court^e being severallie assigned to their severall lymyt^e and every of the p^{ticuler} receivo^rs of the same severall court^e, being also severallie assigned and joyned wth the same severall audito^rs in their said severall lymyt^e, after and betwene every of the feast^e of Seint Michell tharchaungell and Cristmas, shall direct and award their severall warraunt^e and precept^e under their seales to every of the receivo^rs bailiff^e revs and other officers whatsoever accomptable

and summon bailiffs, &c. to account.

¹ to printed copies.

² so printed copies.

before the same auditours, and by the same warraunt or precept to charge and cōmaunde in the name of o^r said soverain lord the King every of the said receivours bailliffe reve and other officers to appere before them at oon certeine daie and place in the same warrant or precept to them prescribed, there to declare and make a just and true accompt of all such receipte wherof thei be accomptable and owe to accompt. And after if the same auditours and perticuler receiveo^rs doo repaire unto the same place, and there kepe their audit according to the same proclamacions precept and warraunt, that then if any receiveo^r baillif reve or other officer being accomptable of or for eny of the mannours landes teitē or other whatsoever hereditamentē now remayning or which hereafter shall be and remayne in the order governaunce or survei of any of the same severall courtē, be lauffully warned as well by the same pelamacion or by precept or warraunt in writing and sealed, and in the name of eny of the auditours of the saide severall courtē personallie to appere by himself or by his sufficient and lauffull deputie before the same auditour and receivour at oon certein daie and place in the same warrant or precept p^rscribed, there to make and declare a just and a true accompt of all [the¹] receipte of his said office, and ⁽²⁾ the same receiveo^r reve baillif and other officer so being lauffullie warned doo not appere before the same auditour and receivour at the same daie and place in the said warraunt expressed, or if the same receivour baillife reve or officer do at the same daie and place to them prescribed, appere and will not accompt before the same auditour according to the tenour and effect of the same precept or warraunt, or if the same receivour baillif reve or other officer accomptable, do by himself or by his sufficient and lawfull deputie appeare before the same audit^r and receivour, and then and there enter into his or their accompt before the said auditour, and after the same account finisshed and ended, if the same receivour baillife reve or other officer doo not content and paie unto the treasurer of the same severall courtē or to the generall or pticular receivour of the same countie for the time being, as the case shall require, wⁱn thre weekē next and immediatelie after the same accompt fully finished and ended, all such sōmes of money whiche upon the determynacion of his said accompt he shall happen to bee found in arrerages and the same default and contempt being dulye p^rved before the hed officer or officers of the said sevall courtē for the tyme being, that then every such receivour baillife reve or officer so offending to forfeite and lose his said office and also his fee which he o^r thei had and p^rceived for the exercising of the same office.

Accounting officers making default in appearance, or accounting, or payment, shall forfeit their offices.

49. AND that if eny of the said receiveo^rs bailliffe reve or other officers, upon the declaracion of their sayd accompte doo willingly concele and w^drawe any rente revenue fyne herryet or other casualtie whatsoever it be, of the which he ought to have made accompt, and the same duellie approved before the said hed officer or officers for the tyme being; that then every such receivour baillif reve or other officer so offending, to forfeit and lose his said office and

Penalty on accountants concealing rent, &c. for forfeiture of office; and treble amount:

¹ printed copies omit.

² if printed copies.

Process and
attachment
thereon.

In actions for
debt accruing
to the King
by attainder,
&c. the
circumstances
shall be
alleged
generally.

Suits by the
King shall
have prefer-
ence to private
suits, and
execution be
first had
thereon.

Lands
descending to
heirs in fee or
tail shall be
charged with
debts to the
King by
specialty;
though the
heir be not
named
therein.

fee, which he had for the exersysing of the same, and also thre tymes as much as he hath so concealed and w^ddrawen: And that the said hed officer or officers of the same sevall court^e for the tyme being, immediatlie upon certificat to him made of the same default contempt or offence, shall awarde proces in nature of attachement against the same receivour baillif reve or other officer, as well for the same arrerages remayning in the handes of the same receivour baillif reve or officer, as also for the penaltie of their recognisaunce or bonde, in which the same receivour baillif reve or officer stondeth bounden to o^r saide sovereign lord the King, as also for the contempt and paine lymytted and apointed by this Acte.

50. AND that in all actions and sute to be taken or pursued in eny the court^e aforsaid, for the recovery of eny dett or or dett^e which now be or that hereafter shall happen to apperteigne accue remaine or be to the King by reason of any atteindour outlawry forfeiture gift of the partie, or by eny other collaterall waie or meanes, it shalbe sufficient in the lawe to shew and alledge in the said sute gen^lally, that the partie to whom the said dett or dett^e was due or did belong such yere and daie, did gyve the same dett or dett^e unto the King, or was atteinted outlawed or other offence forfeiture dede acte or thing commytted or [did,¹] by reason wherof the saide dett or dett^e did accrewe and ought to remaine come and be to the King: And that the same matter so to be shewed alleged or declared in a generalitie, w^out shewing and declaring the circumstaunce therof, shalbe of as good force and effect in the lawe to all entente constructions and p^oposes as if the hole matter therof had ben or were alleged and declared at large in every point, according to the due order of the comon lawes of this realme.

51. AND that if eny sute be cōmensed or taken, or eny pces hereafter awarded for the King for the recovery of eny the King^e debte, that then the same sute and prosesse shalbe preferred before the sute of any other pson or persones; and that o^r saide sovereign lorde his heires and successours shall have [the²] first execution against any defend^{unt} or defendaut^e of [and³] for his said dett^e, before eny other persō or persones; so alwaies that the King^e saide sute be taken and cōmenced, or proces awarded for the said dett, at the sute of o^r said sovereign lord the King his heires or successours, before judgement gyven for the said other persone or persones.

52. AND that all manors landes teñt^e possessions and hereditamēt^e, the which now be or that heerafter shall come [or⁴] be, in or to the handes possession occupation or season of eny person or persones, to whom the same manours landes teñt^e or hereditamēt^e, have heretofore or hereafter shall descende revert or remaine in fee symple or in fee taile generall or spiall, by from or after the death of eny his or their auncester or auncesters as heir, or by gift of his auncesters whose heire he is, which said auncester or auncesters was is or shalbe indetted to the King, or to eny other person or persons

¹ done printed copies.
³ or printed copies.

² printed copies omit.
⁴ and printed copies.

to his use, by judgement recognisaunce obligacion or other spialtie, the dett wherof is or shall not be contented and paied; that then in every such case the same manours landes tenementē possessions and hereditamentē shalbe and stand by auctoritie of this Acte, from hensforth charged and chargeable to and for the payment of the same dett and of every part therof: And that our said sovereign lord his heires and successours, at any tyme hereafter shall not be barred delaied forclosed or excluded to demaunde have and receyve his or their just due and lanfull debtē and dueties against eny of his subjectē, as heire or heires to eny person or persones endetted to his Highnes or to other persones to his use, or which shalbe endetted to his Highnes his heires or successours, albeit this word heir be not or shall not be comprised in such recognisaunce obligacion or spialtie, or that any such persone or persones shall saie or alledge that he or thei have not eny maners landes teñtē or hereditamentē to them descended, but oonelie such maners landes tenementē or hereditamentē as be or shalbe entailed or gyven to them by eny their auncesters to whom thei be heires; any lawes uses or customes before this tyme used or had to the contrarie notwithstanding.

53. PROVIDED alwaies, that the Kinge Majestie his heires and successo's maie at his or their libertie and pleasure demaunde have and recover his or their said det or dettē of and against any executor or executo's admynistrator or administrato's of eny such person or persones which is hath ben or shalbe indetted in maner and fourme abovesaid, if the same executour or executo's administratour or administrato's shall have [asses¹] in his or their handes in dede or in lawe; eny thing before mencioned to the contrarie notwithstanding.

The King may recover against executors, &c. having assets.

54. PROVIDED also, that if the said manours londes and hereditamentē or any of them shall hereafter be recovered or evicted out of or from the possession of eny such person or persones by eny just or former title, w^out fraude or covyne whose manor's landes teñtē or hereditamentē ben or shalbe charged or chargeable as is abovesaid, that then all and every such manours landes and hereditamentē shall be clerlie acquitted and discharged of and for the payment of the said dettē and every part therof; any thing before mencioned to the contrarie notw^tstanding.

Proviso for lands recovered from the heir by prior title.

55. PROVIDED alwei . . . that if any person or persones of whom eny such dett or dutie is or at any tyme hereafter shall be demaunded or required, allege plede declare or shew in eny of the said courtē, good perfit sufficient cause and matter in lawe reason or good consiens in barre or discharge of the said det or dutie, or whi such person or persones ought not to be charged or chargeable to or w^t the same, and the same cause or matter so alleged pleaded declared or shewed, sufficientlie proved in such oon of the said courtē as he or thei shall be impleaded sued vexed or trobled for the same; that then the said courtē and every of them shall have full power and au^ctie to accepte adjudge and allowe the same prof, and holye and clerlie to acquite and discharge all and every person and persones that shall be

Proviso for good cause of discharge of such debts.

¹ assets printed copies.

so impleaded sued vexed or troubled for the same; any thing in this presente Acte before mencioned to the contrarie notwithstanding.

Lands held severally shall be chargeable in the whole.

56. PROVIDED also . . . that if any maners landes teñtē or hereditamentē which be or at eny tyme hereafter shalbe charged or chargeable to or w^t the det of o^r said sovereigne lord his heires or successours, and be or at eny tyme hereafter shalbe in the season and possession of divers and sundrie persones, other then the obligo^r or obligo^{rs}, that then all and singuler the said maners landes teñtē and hereditamentē and every percell of them, shall be holy and entierlie and in nowise severallie liable and chargeable to and with the payment and paymentē of the said det and duetie, any thing before rehersed to the cont^{ary} notwithstanding.

Proviso for liberties of the duchy of Lancaster.

57. PROVYDED also that this Act nor eny thing therein conteigned shall in eny wise extende to mynyshe abrogate or take awaie any realties libties privileges franchises prehemynences jurisdictiones fines issues or amerciamentē aperteigning or belonging to the saide duchie of Lancaster and countie pallantyne of Lancaster or eny of them; but that the same libties realties privileges franchises pheminences jurisdictiones fines issues and amerciamentē and every of them shall still contynue remaine and be to the saide duchie of Lancaster and countie palantyne and to every of them as fully holly and plenaryly as thei were before the making of this present Acte; any thing in the same conteigned to the contrarie notwithstanding.

Process for debts arising in the Exchequer shall be made in that Court.

58. ⁽¹⁾ PROVIDED alway² . . . that all maner of pces [pcessus³] & executyons for dettis only cōmyng or growyng in the Courte of Theschequer shalbe made in the same Courte of Theschequyer by souche officer & officers clerke or mynyster of the same courte as hath ben afore thys tyme used to bee made, after & with souche kinde of pces pcessus and executyons as by this Acte ys lymtyed & declared; any thyng in this Acte conteyned to the contrary notwithstanding.

¹ This proviso is annexed to the original Act in a separate schedule.

² The words omitted in this section and sects. 37, 39, 41, 42, 44—52, 55, 56, were repealed by the Statute Law Revision Act, 1888 (51 & 52 Vict. c. 3).

³ Printed copies omit.

THE EXCHEQUER COURT ACT, 1842.

(5 & 6 VICT. c. 86.)

[Short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).]

An Act for abolishing certain Offices on the Revenue Side of the Court of Exchequer in England, and for regulating the Office of Her Majesty's Remembrancer in that Court.

[5th August, 1842.]

8. *And whereas there is often inconvenient delay and great expense incurred in recovering debts to the Crown, more particularly with respect to extents, by reason of the interval between the terms; be it enacted, That all or any commissions, extents, writs, or other process of whatever denomination to be hereafter issued from the office of Her Majesty's Remembrancer, in pursuance of this or any further or other Act or Acts, or according to the ancient usage or practice of the Court of Exchequer, may bear teste, and be made returnable and be returned on any day certain in term or vacation to be named in such commission, extent, writ, or other process, and thereupon, and at the return of any such commission, extent, writ, or other process, the like rules may be given, and such other proceedings had, and such subsequent writs and process issued, at any time in vacation, as may be given, had, or issued in term, or at or before the seal day after term; and all such commissions, extents, writs, or other process, rules, and proceedings, shall be as valid and effectual as if the same had been tested and made returnable, or given and had, or issued in term, according to the common law and course of the Exchequer: Provided always, that nothing herein contained shall extend to alter the time for filing any pleadings, or to authorise the entering up of any judgment in vacation; and that where any person shall enter a claim to any goods seized under any extent, or returned as forfeited (which it shall be lawful to do in vacation), the further proceedings shall be only according to the ordinary practice and course of the Court.*

Writs and other process to be made returnable without delay when necessary and proper.

The words in italics were repealed by the Statute Law Revision (No. 2) Act, 1890 (53 & 54 Vict. c. 51).

9. All such orders relating to revenue causes and matters of revenue as have heretofore been made at the sittings of the Court of Exchequer appointed and held after term may be made at any time by any single judge out of Court.

Revenue orders may be made by a single judge.

[The whole of the remainder of the Act has been repealed: the preamble by the Statute Law Revision (No. 2) Act, 1888 (51 & 52 Vict. c. 57); sects. 1, 3, 6, 11 by the Statute Law Revision (No. 2) Act, 1874 (37 & 38 Vict. c. 96); sects. 2, 4, 7, 10 by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59); and sect. 5 by the Common Law Courts (Fees) Act, 1865 (28 & 29 Vict. c. 45), s. 8 and Sched. II.]

THE PETTY BAG ACT, 1849.

(12 & 13 VICT. c. 109.)

[Short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).]

An Act to amend an Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common Law Side of that Court, and the Enrolment Office of the said Court.

[1st August, 1849.]

29. Any writ of scire facias for repealing, cancelling, or vacating any letters patent or charter, which shall or may at any time hereafter be issued in any action at the suit of Her Majesty, *hereafter to be commenced*, shall or may be

Writs of scire facias may be directed to sheriff of any county.

directed and sent to the sheriff of any county in England or Wales, although the record upon which such writ shall be founded or issued may be or remain in the county of Middlesex or any other county, and it shall not be necessary that any such writ which at any time hereafter may be issued and directed to the sheriff of any such county as aforesaid shall be a testatum writ, or founded upon any previous writ directed or sent to the sheriff of Middlesex or any other county.

Words in italics repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

See pp. 433, 537, above.

Declarations
to be
delivered,
and not filed.

30. In case any defendant in any action, suit, or proceeding already or hereafter to be commenced shall appear on the Common Law side of the Court of Chancery, in person or by attorney, to answer in such action, suit, or proceeding, it shall not be necessary to file any declaration, but the plaintiff or prosecutor, or his attorney, shall deliver the declaration to such defendant or his attorney, . . . and on the traverse of an inquisition found the traverse shall be filed in the Petty Bag Office, and the traverser or his attorney shall deliver a copy thereof to the opposite party or his attorney.

The omitted portion of this section refers to actions of *scire facias* to repeal letters patent for inventions, which are now obsolete (see p. 537, above).

See further, pp. 439, 534, above.

Pleadings to
be delivered
and not filed

31. In any such action, suit, or proceeding as aforesaid no demurrer, nor any plea or pleading subsequent to the declaration or traverse, shall be filed in the said Office of the Petty Bag or otherwise in the said Court of Chancery; and in every such action, suit, or proceeding every such demurrer, plea, and subsequent pleading shall be delivered by the party demurring or pleading, or his attorney, to the opposite party, or his attorney, and the issue in any such action, suit, or proceeding shall be delivered only, and not filed, and shall or may be made up and delivered by either party or his attorney to the opposite party or his attorney.

See further, p. 440, above.

Affidavits may
be sworn
before Clerk
of Petty Bag

45. Any affidavit, affirmation, or declaration to be sworn or made or taken, and read or used, in the said Court, shall or may be sworn, made, or taken by or before the Clerk of the Petty Bag for the time being, who is hereby authorised and required to administer, receive, or take the necessary and proper oath, affirmation, or declaration to every person desirous of swearing, making, or taking any such affidavit, affirmation, or declaration as aforesaid, and every person who shall wilfully and corruptly swear, affirm, or declare falsely in any such affidavit, affirmation, or declaration shall be guilty of perjury, and shall be prosecuted and punished accordingly.

As to the Clerk of the Petty Bag, see pp. 430, 433, above.

The Act, except the above sections, was repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

THE EVIDENCE ACT, 1851.

(14 & 15 VICT. c. 99.)

[Short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14); sects. 2 and 3 applied to proceedings at law on the Revenue side of the King's Bench Division by the Crown Suits, &c. Act, 1865, s. 34.]

An Act to amend the Law of Evidence.

[7th August, 1851.]

2. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any Court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

Parties to be admissible witnesses.

3. But nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband.

Person charged with criminal offence not compellable to criminate himself, &c.

As to the extent to which informations for penalties are criminal proceedings, see above, pp. 174, 220.

THE COMMON LAW PROCEDURE ACT, 1852.

(15 & 16 VICT. c. 76.)

And with respect to juries and jury process, be it enacted as follows:

Jury and Jury Process.

104. The several writs of *venire facias juratores*, and *distringas juratores*, or *habeas corpora juratorum*, and the entry *jurata ponitur in respectu*, shall no longer be necessary or used.

Jury process abolished.

105. The precept issued by the judges of assize to the sheriff to summon jurors for the assizes shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes; and the jurors shall thereupon be summoned in like manner as at present.

Precept by judges of assize to summon jurors for civil as well as criminal trials.

106. A printed panel of the jurors summoned shall, seven days before the commission day, be made by the sheriff, and kept in the office for inspection; and a printed copy of such panel shall be delivered by the sheriff to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the *ni si prius* record.

A printed panel to be prepared, and annexed to the record.

107. The sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of a judge of any of the said superior Courts, and without any other authority, summon a sufficient number of common jurors for

Sheriffs of London and Middlesex to summon

common jurors, and prepare a panel, to be annexed to the record.

the trial of all issues in the superior Courts of common law, in like manner as before this Act; and seven days before the first day of each sittings a printed panel of the jurors so summoned for the trial of causes at such sittings shall be made by such sheriffs, and kept in their offices for public inspection; and a printed copy of such panel shall be delivered by the said sheriffs to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the nisi prius record; and the said precept shall and may be in like form as the precept issued by the judges of assize, and one thereof shall suffice for each term, and for all the superior Courts; and it shall be the duty of the sheriffs respectively to apply for and procure such precept to be issued in sufficient time before each term to enable them to summon the jurors in manner aforesaid; and it shall be lawful for the several Courts, or any judge thereof, at any time to issue such precept or precepts to summon jurors for disposing of the business pending in such Courts, and to direct the time and place for which such jurors shall be summoned, and all such other matters as to such judge shall seem requisite.

Special jurors, not exceeding forty-eight in number, to be summoned to try all special jury causes at assizes.

108. The precept issued by the judges of assize as aforesaid shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered, and annexed to the nisi prius record, in like time and manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be ballotted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors: Provided that the Court or a judge, in such case as they or he may think fit, may order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause.

Mode of obtaining a special jury in country causes.

109. In any county, except London and Middlesex, the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant, or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury: Provided that the Court or a judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

Special juries in London and Middlesex, how struck.

110. In London and Middlesex special jurors shall be nominated and reduced by and before the under sheriff and secondary respectively, in like manner as by the master before this Act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the nisi prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be ballotted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors.

See below, pp. 751, 752.

111. Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the Court or a judge, if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such Court or judge shall think fit.

Remedy for delay by notice of trial by special jury.

112. Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment day in London, or commission day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the Court or a judge.

Notice to sheriff of trial by special jury.

113. In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

If special jury not summoned, cause to be tried by a common jury.

114. A writ of view shall not be necessary or used, but, whether the view is to be had by a common or special jury, it shall be sufficient to obtain a rule of the Court or judge's order, directing a view to be had; and the proceedings upon the rule for a view shall be the same as the proceedings heretofore had under a writ of view; and the sheriff, upon request, shall deliver to either party the names of the viewers, and shall also return their names to the associate for the purpose of their being called as jurymen upon the trial.

View to be by rule without writ.

See below, p. 752.

115. The jurors contained in such panels as aforesaid shall be the jurors to try the causes at the assizes and sittings for which they shall be summoned respectively; and all such proceedings may be had and taken before such juries in like manner, and with the like consequences in all respects, as before any jury summoned in pursuance of any writ or writs of venire facias juratores, distringas juratores, or habeas corpora juratorum, before this Act.

Proceedings before jurors so returned same as before this Act.

Sects. 104—115 are applied to proceedings at law on the Revenue side of the King's Bench Division by Rule 75 (p. 765). The repeal for other purposes of sects. 104, 109, 111, does not affect such application.

And with respect to the admission of documents, be it enacted as follows:

Admission of Documents.

117. Either party may call on the other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the master a saving of expense.

Admission of documents.

See below, p. 750.

118. An affidavit of the attorney in the cause, or his clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions.

Proof of admissions.

THE EVIDENCE AMENDMENT ACT, 1853.

Proof of
notice to
produce.

119. An affidavit of the attorney in the cause, or his clerk, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

Sects. 117—119 are applied to proceedings at law on the Revenue side of the King's Bench Division by Rule 76 (p. 765). Their repeal by the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), does not affect such application.

154—157, 159—166. [These groups of sections were applied by Rules 101, 103 respectively (p. 769). They have been omitted, as they relate to proceedings in error, and, owing to the application of Ord. LVIII. by Ord. LXVIII. r. 2, may now be regarded as obsolete.]

THE EVIDENCE AMENDMENT ACT, 1853.

(16 & 17 VICT. c. 83.)

[Applied to proceedings at law on the Revenue side of the King's Bench Division by the Crown Suits, &c. Act, 1865, s. 34.]

An Act to amend an Act of the Fourteenth and Fifteenth Victoria, Chapter Ninety-nine. [20th August, 1853.]

[Preamble repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).]

Husbands and
wives of
parties to be
admissible
witnesses;

1. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any Court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the husbands and wives of the parties thereto, and of the persons in whose behalf any such suit, action, or other proceeding may be brought or instituted, or opposed or defended, shall, except as herein-after excepted, be competent and compellable to give evidence, either *viva voce* or by deposition according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

except in
criminal and
other cases;

2. Nothing herein shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceeding, *or in any proceeding instituted in consequence of adultery.*

Words in italics repealed by the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68), s. 1.

and not com-
pelled to
disclose
communica-
tions.

3. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

4. [Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).]

Short title.

5. In citing this Act in other Acts of Parliament, or in any instrument, document, or proceeding, it shall be sufficient to use the expression, "The Evidence Amendment Act, 1853."

6. [Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).]

THE COMMON LAW PROCEDURE ACT, 1854.

(17 & 18 VICT. c. 125.)

19. It shall be lawful for the Court or judge, at the trial of any cause, where they or he may deem it right for the purposes of justice, to order an adjournment for such time, and subject to such terms and conditions as to costs, and otherwise, as they or he may think fit. Power to adjourn trial.

20. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following; *videlicet*, Affirmation instead of oath in certain cases.

“I A. B. do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c.”

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

21. If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing, which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this Kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury. Persons making a false affirmation to be subject to the same punishment as for perjury.

22. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. How far a party may discredit his own witness.

23. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. Proof of contradictory statements of adverse witness.

24. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit. Cross-examination as to previous statements in writing.

Proof of previous conviction of a witness may be given.

25. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either denies the fact, or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the Court, or other officer having the custody of the records of the Court where the offender was convicted, or by the deputy of such clerk or officer, (for which certificate a fee of five shillings and no more shall be demanded or taken,) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

Attesting witness need not be called, except in certain cases.

26. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto.

Comparison of disputed writing.

27. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

Provision for stamping documents at the trial.

28. Upon the production of any document as evidence at the trial of any cause, it shall be the duty of the officer of the Court whose duty it is to read such document to call the attention of the judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, shall not be received in evidence until the whole or (as the case may be) the deficiency of the stamp duty, and the penalty required by statute, together with the additional penalty of one pound, shall have been paid.

Officer of the Court to receive the duty and penalty.

29. Such officer of the Court shall, upon payment to him of the whole or (as the case may be) of the deficiency of the stamp duty payable upon or in respect of such document, and of the penalty required by statute, and of the additional penalty of one pound, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty, and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall, at the end of each sittings or assizes (as the case may be), duly make a return to the Commissioners of the Inland Revenue of the monies, if any, which he has so received by way of duty or penalty, distinguishing between such monies, and stating the name of the cause and of the parties from whom he received such monies, and the date, if any, and description of the document for the purpose of identifying the same; and he shall pay over the said monies to the Receiver General of the Inland Revenue, or to such person as the said Commissioners shall appoint or authorize to receive the same; and in case such officer shall neglect or refuse to furnish such account, or to pay over any of the monies so received by him as aforesaid, he shall be liable to be proceeded against in the manner directed by the eighth section of an Act passed in the Session of Parliament holden in the thirteenth and fourteenth years of the reign of Her present Majesty, intituled *An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, and to amend the Laws relating to the*

Stamp Duties; and the said Commissioners shall, upon request, and production of the receipt hereinbefore mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid: Provided always, that the aforesaid enactment shall not extend to any document which cannot now be stamped after the execution thereof on payment of the duty and a penalty.

Sects. 28 and 29 were repealed by the Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99); see now the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14.

30. No document made or required under the provisions of this Act shall be liable to any stamp duty.

No document under this Act to require a stamp.

31. No new trial shall be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

No new trial for ruling as to stamp.

32. Error may be brought upon a judgment upon a special case in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error shall, as nearly as may be, be the same as in the case of a special verdict; and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the Court in which it was originally decided, the said Court of Error being required to draw any inferences of fact from the facts stated in such special case which the Court where it was originally decided ought to have drawn.

Error may be brought on a special case.

Sects. 19—32 are applied by sect. 103 of this Act, which in its turn is applied to proceedings on the Revenue side of the King's Bench Division by the Crown Suits, &c. Act, 1865, ss. 22, 35. As to sects. 28, 29, see note to sect. 29. The repeal of sects. 19, 21—27, 30, 31, 32, for other purposes does not affect their application here, but sect. 32 is now rendered obsolete by the application of Ord. LVIII., as to appeals, by Ord. LXVIII. r. 2.

34. In all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to show cause be refused or granted and then discharged or made absolute, the party decided against may appeal.

If rule nisi refused, party may appeal.

35. In all cases of motions for a new trial upon the ground that the judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal, provided any one of the judges dissent from the rule being refused, or, when granted, being discharged or made absolute, as the case may be, or, provided the Court in its discretion think fit that an appeal should be allowed; provided, that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence or otherwise, no such appeal shall be allowed.

Appeal upon rule discharged or absolute.

36. The Court of Error, the Exchequer Chamber, and the House of Lords shall be Courts of Appeal for the purposes of this Act.

Courts of Error to be Courts of Appeal.

37. No appeal shall be allowed unless notice thereof be given in writing to the opposite party or his attorney, and to one of the masters of the Court, within four days after the decision complained of, or such further time as may be allowed by the Court or a judge.

Notice of appeal.

Sects. 34—37 are applied by the Crown Suits, &c. Act, 1865, s. 31. Their repeal for other purposes does not affect their application here, subject, however, to the effect of Ord. LVIII., applied by Ord. LXVIII. r. 2.

39. The appeal hereinbefore mentioned shall be upon a case to be stated by the parties, (and in case of difference to be settled by the Court or a judge of the

Form of appeal.

Court appealed from,) in which case shall be set forth so much of the pleadings, evidence, and the ruling or judgment objected to, as may be necessary to raise the question for the decision of the Court of Appeal.

Rule nisi granted on appeal, how disposed of. Judgment, Court of Appeal.

40. When the appeal is from the refusal of the Court below to grant a rule to show cause, and the Court of Appeal grant such rule, such rule shall be argued and disposed of in the Court of Appeal.

41. The Court of Appeal shall give such judgment as ought to have been given in the Court below; and all such further proceedings may be taken thereupon as if the judgment had been given by the Court in which the record originated.

Powers of Court of Appeal as to costs and otherwise.

42. The Court of Appeal shall have power to adjudge payment of costs, and to order restitution; and they shall have the same powers as the Court of Error in respect of awarding process and otherwise.

Error upon award of trial *de novo*.

43. Upon an award of a trial *de novo* by any one of the superior Courts or by the Court of Error, upon matter appearing upon the record, error may at once be brought; and if the judgment in such or any other case be affirmed in error, it shall be lawful for the Court of Error to adjudge costs to the defendant in error.

Payment of costs upon new trial on matter of fact. Affidavits on new matter.

44. When a new trial is granted, on the ground that the verdict was against evidence, the costs of the first trial shall abide the event, unless the Court shall otherwise order.

45. Upon motions founded upon affidavits it shall be lawful for either party, with leave of the Court or a judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

To sects. 39—45 the note to sect. 37 applies.

Rule or order for summoning jury.

59. The several Courts, or any judge thereof, may make all such rules or orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury for the trial of any cause or matter depending in such Courts, at such time and place and in such manner as they or he may think fit.

This section is applied by the Crown Suits, &c. Act, 1865, s. 31.

Courts may appoint sittings.

95. The superior Courts may appoint and hold sittings either in banc, or for the trial of issues in fact by judge or jury, at any time or times, whether in term or vacation, not being between the tenth of August and the twenty-fourth of October.

The note to sect. 37 applies to this section.

Enactments in sects. 19 to 32 to apply to every Civil Court of Judicature in England and Ireland.

103. The enactments contained in sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two of this Act shall apply and extend to every Court of Civil Judicature in England and Ireland.

By sects 22 and 35 of the Crown Suits, &c. Act, 1865, the Revenue side of the King's Bench Division, both at law and in equity, is to be deemed to be a Court of Civil Judicature within the meaning of this section.

THE CROWN SUITS ACT, 1855.

(18 & 19 VICT. c. 90.)

[Short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).]

An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in Matters relating to the Revenue [and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer].

[14th August, 1855.]

[Whereas in divers proceedings instituted by or on behalf of the Crown against the Queen's subjects in respect of matters relating to the revenue no costs are recovered by the Crown, except in certain cases, and no costs are paid by the Crown to the subject: And whereas it is expedient to assimilate the law as to the recovery of costs in such proceedings by or on behalf of the Crown to that in force as to proceedings between subject and subject: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—]

Words in italics within brackets repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

1. In all informations, actions, suits, and other legal proceedings to be hereafter instituted before any Court or tribunal whatever in the United Kingdom of Great Britain and Ireland, by or on behalf of the Crown, against any corporation, or person or persons, in respect of any lands, tenements, or hereditaments, or of any goods or chattels, belonging or accruing to the Crown, the proceeds whereof, or the rents or profits of which said lands, tenements, or hereditaments, by any Act now in force or hereafter to be passed are to be carried to the Consolidated Fund of Great Britain and Ireland, or in respect of any sum or sums of money due and owing to Her Majesty by virtue of any vote of Parliament for the service of the Crown, or of any Act of Parliament relating to the public revenue, Her Majesty's Attorney-General, or in Scotland the Lord Advocate, shall be entitled to recover costs for and on behalf of Her Majesty, where judgment shall be given for the Crown, in the same manner, and under the same rules, regulations, and provisions as are or may be in force touching the payment or receipt of costs in proceedings between subject and subject, and such costs shall be paid into the Exchequer, and shall become part of the Consolidated Fund.

In all Crown suits, &c., where the Crown is successful, costs to be recovered as between subject and subject.

Extended and applied to the Isle of Man by the Crown Suits (Isle of Man) Act, 1862 (25 & 26 Vict. c. 14), s. 1.

See now Ord. LXV., applied by Ord. LXVIII., r. 2. See also the Queen's Remembrancer Act, 1859, s. 21, p. 679.

As to the recovery of costs by prerogative process, in addition to or in substitution for the method available to a subject, see the observations on sect. 11 of the Petitions of Right Act, 1860, p. 398.

The section is fully dealt with above, p. 614.

2. If in any such information, action, suit or other proceeding judgment shall be given against the Crown, the defendant or defendants shall be entitled to recover costs, in like manner, and subject to the same rules and provisions, as though such proceeding had been had between subject and subject; and it shall be lawful for the *Commissioners of Her Majesty's Treasury* and they are hereby

Defendant entitled to costs, if successful against the Crown.

THE LEGITIMACY DECLARATION ACT, 1858.

required to pay such costs out of any monies which may be hereafter voted by Parliament for that purpose.

Words in italics repealed by the Statute Law Revision Act, 1892.

Extended and applied to the Isle of Man by the Crown Suits (Isle of Man) Act, 1862, s. 1.

See further above, p. 614.

3. [*Power to judges to make rules for regulating the pleading and practice in Crown suits.*]

Repealed by the Statute Law Revision Act, 1892.

No rules under this section are now in force.

THE LEGITIMACY DECLARATION ACT, 1858.

(21 & 22 VICT. c. 93.)

An Act to enable Persons to establish Legitimacy and the Validity of Marriages, and the Right to be deemed natural-born Subjects. [2nd August, 1858.]

Whereas it is expedient to enable persons to establish their legitimacy, and the marriage of their parents and others from whom they may be descended, and also to enable persons to establish their right to be deemed natural-born subjects: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Application to Court for Divorce and Matrimonial Causes for declaration of legitimacy or validity or invalidity of marriage.

1. Any natural-born subject of the Queen, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes, praying the Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such Court for a decree declaring that his marriage was or is a valid marriage, and such Court shall have jurisdiction to hear and determine such application, and to make such decree declaratory of the legitimacy or illegitimacy of such person, or of the validity or invalidity of such marriage, as to the Court may seem just; and such decree, except as hereinafter mentioned, shall be binding to all intents and purposes on Her Majesty and on all persons whomsoever.

Application to Court for declaration of right to be deemed a natural-born subject.

2. Any person, being so domiciled or claiming as aforesaid, may apply by petition to the said Court for a decree declaratory of his right to be deemed a natural-born subject of Her Majesty, and the said Court shall have jurisdiction to hear and determine such application, and to make such decree thereon as to the Court may seem just; and where such application as last aforesaid is made by the person making such application as herein mentioned for a decree declaring his legitimacy or the validity of a marriage, both applications may be included in the same petition; and every decree made by the said Court shall, except as hereinafter mentioned, be valid and binding to all intents and purposes upon Her Majesty and all persons whomsoever.

3. Every petition under this Act shall be accompanied by such affidavit verifying the same, and of the absence of collusion, as the Court may by any general rule direct. Petition to be accompanied by affidavit.

See Matrimonial Causes Rule 2 (St. R. & O. Rev., Vol. 12, p. 869).

4. All the provisions of the Act of the last session, chapter eighty-five, so far as the same may be applicable, and the powers and provisions therein contained in relation to the making and laying before Parliament of rules and regulations concerning the practice and procedure under that Act, and fixing the fees payable upon proceedings before the Court, shall extend to applications and proceedings in the said Court under this Act, as if the same had been authorized by the said Act of the last session. 20 & 21 Vict. c. 85, to apply to proceedings under this Act.

Rule 174 of the Matrimonial Causes Rules (St. R. & O. Rev., Vol. 12, p. 892) extends those Rules, so far as applicable, to proceedings under this Act.

5. In all proceedings under this Act the Court shall have full power to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs shall be paid. Power to award and enforce payment of costs.

6. A copy of every petition under this Act, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to Her Majesty's Attorney-General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto. Attorney-General to have a copy of petition one month before it is filed, and to be respondent.

7. Where any application is made under this Act to the said Court such person or persons (if any) besides the said Attorney-General as the Court shall think fit shall, subject to the rules made under this Act, be cited to see proceedings or otherwise summoned in such manner as the Court shall direct, and may be permitted to become parties to the proceedings, and oppose the application. Court may require persons to be cited.

This matter is governed by the Matrimonial Causes Rules (see note to sect. 4).

8. The decree of the said Court shall not in any case prejudice any person, unless such person has been cited or made a party to the proceedings, or is the heir-at-law or next of kin or other real or personal representative of, or derives title under or through a person so cited or made a party; nor shall such sentence or decree of the Court prejudice any person if subsequently proved to have been obtained by fraud or collusion. Saving for rights of persons not cited.

9. Any person domiciled in Scotland, or claiming any heritable or moveable property situate in Scotland, may raise and insist, in an action of declarator before the Court of Session, for the purpose of having it found and declared that he is entitled to be deemed a natural-born subject of Her Majesty; and the said Court shall have jurisdiction to hear and determine such action of declarator, in the same manner and to the same effect, and with the same power to award expenses, as they have in declarators of legitimacy and declarators of bastardy. Person domiciled in Scotland may insist, on an action of declarator, that he is a natural-born subject.

10. No proceeding to be had under this Act shall affect any final judgment or decree already pronounced or made by any Court of competent jurisdiction. No proceedings to affect final judgments, &c. already pronounced.

11. The said Act of the last session and this Act shall be construed together as one Act; and this Act may be cited for all purposes as "The Legitimacy Declaration Act, 1858." Acts to be read together. Short title.

THE QUEEN'S REMEMBRANCER ACT, 1859.

(22 & 23 VICT. c. 21.)

[Short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14). For "Court of Exchequer" throughout this Act read "King's Bench Division of the High Court of Justice."]

An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer.

[13th August, 1859.]

5 & 6 Vict.
c. 86.

Whereas an Act was passed in the session holden in the fifth and sixth years of Her Majesty, chapter eighty-six, "for abolishing certain Offices on the Revenue Side of the Court of Exchequer in England, and for regulating the Office of Her Majesty's Remembrancer in that Court": And whereas the office of the said Remembrancer may be conveniently held and the duties thereof performed by one of the Masters of the said Court, and the Commissioners of Her Majesty's Treasury have, upon the retirement of Henry William Vincent, Esquire, appointed William Henry Walton, Esquire, one of the said Masters, to the said office of Remembrancer: And whereas it is expedient further to regulate the said office, and to make other provision in relation thereto, and to the procedure on the Revenue side of the said Court: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

1—5. [These sections, relating to the appointment of the Queen's Remembrancer, were repealed by the Supreme Court of Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 29 and Sched. II. By sect. 14 (3) and Sched. I. Part 3 of the same Act, it was provided that the office should be held, after the occurrence of the next vacancy, by the Senior Master of the Supreme Court, and it is now so held.]

6. [Relating to the enrolment of accounts, was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).]

7. [Relating to the Middlesex Registry of Deeds, was repealed by the Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), s. 7 and Sched. II.]

Compensation
monies for
land under
5 & 6 Vict.
c. 94, and
16 & 17 Vict.
c. 107, to be
paid into the
Court of
Chancery
instead of to
the Queen's
Remem-
brancer.

8. Any money which under the Act of the session holden in the fifth and sixth years of Her Majesty, chapter ninety-four, "to consolidate and amend the Laws relating to the Services of the Ordnance Department, and the Vesting and Purchase of Lands and Hereditaments for those Services, and for the Defence and Security of the Realm," is required or authorized to be paid into the hands or in the name of the Remembrancer or other proper officer of Her Majesty's Court of Exchequer at Westminster, or which under the Act of the session holden in the sixteenth and seventeenth years of Her Majesty, chapter one hundred and seven, "*The Customs Consolidation Act, 1853*," is required or authorized to be paid to the proper officer of the Court of Exchequer at Westminster, shall in lieu of being paid as aforesaid be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there in the matter of the particular Act to the credit of the persons claiming to be interested therein (naming them), pursuant to the method prescribed by any Act in force at the time being for regulating the payment of monies into the said Court; and upon the filing in the Court of Chancery of the certificate of such Accountant-General, with the receipt annexed, of the payment into his name as aforesaid of any such money, the

hereditaments in respect whereof the same is paid shall become vested in the like persons and in the like manner and for the like purposes as if such money had been paid in manner provided by the said Acts of the fifth and sixth and *sixteenth and seventeenth* years of Her Majesty *respectively*, and this Act had not been passed; and the Court of Chancery shall have the like powers in relation to such money as by the said Acts are given to the Barons of the Court of Exchequer, and the provisions of the said Acts in relation to such money shall be read and construed as referring to the Court of Chancery and the said Accountant-General in the place of the Court of Exchequer and the said Remembrancer.

The words in italics were repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). The money will now be paid into Court in the ordinary manner in which funds are so paid in the Chancery Division.

9. *Section 222 of the "Common Law Procedure Act, 1852," for the amendment of defects and errors in any proceeding in civil causes, and concerning the costs and terms of such amendment, shall extend to all suits and proceedings on the Revenue side of the Court of Exchequer.* *Sect. 22 of 15 & 16 Vict. c. 76, extended to suits, &c. in Exchequer.*

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). See now Ord. XXVIII., applied by Ord. LXVIII., r. 2.

10. *In any suit or proceeding on the Revenue side of the Court of Exchequer, the parties may, at any time before judgment, by consent, and order of a judge, state any question or questions of law in a special case for the opinion of the Court, without pleadings, and upon judgment thereon error may be brought as on a judgment on a special verdict, unless the parties agree to the contrary, and the proceedings for bringing a special case before the Court of Error shall, as nearly as may be, be the same as in the case of a special verdict, and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the Court in which it was originally decided, the said Court of Error being required to draw any inferences of fact from the facts stated in such special case, which the Court below ought to have drawn.* *Special case may be stated by consent of parties and order of a judge.*

See note to sect. 14.

11. *In case no agreement shall be entered into as to the costs of such special case and proceedings, the costs shall follow the event, and be recovered by the successful party.* *Costs to follow event unless otherwise agreed.*

See note to sect. 14.

12. *In cases of appeal from the assessment of the Commissioners of Inland Revenue to the Court of Exchequer, made under the provisions of the Succession Duty Act, 1853, the party decided against may appeal from the decision of the Court upon a case to be stated by the parties, or, if they differ, to be settled by the Court, or a judge thereof, or any officer to whom the Court may think proper to refer the same; and the Court of Appeal shall give such judgment as ought to have been given by the Court of Exchequer, and shall have power to adjudge the payment of costs.* *Appeal from assessments of succession duty may be carried to a superior Court.*

See note to sect. 14.

Courts of Appeal.

13. *Such appeal as aforesaid shall be made to the Court of Error in the Exchequer Chamber, and the decision of the said Court of Error shall be subject to appeal to the House of Lords.*

See note to sect. 14.

Notice of appeal to be given.

14. *No such appeal shall be allowed under this Act unless notice thereof be given in writing to the opposite party or attorney, and to the proper officer of the Court, within four days after the decision complained of, or such further time as may be allowed by the Court or judge.*

Sects 10—14 were repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14). See now Ords. XXXIV., LVIII., applied by Ord. LXVIII., r. 2.

In summary proceedings for legacy or succession duty parties may appeal.

15. In any proceeding in the Court of Exchequer by writ of summons under the Succession Duty Act, 1853, or by rule under any of the Legacy Duty Acts, the Court may refer the matter to the proper officer to report thereon, and may, if they deem it expedient, order the facts contained in such report to be stated in the form of a special case for the opinion of the Court, and may give such directions as to the mode of settling the case, and the matters to be contained therein, and for the production of such documents, and may direct any issue or issues of fact to be tried by a jury, as they may think proper, and the Court may proceed to give judgment on such case, and for any amount of duty the Court are of opinion may be due to the Crown, and for costs, in like manner as on a verdict on information, *and on such judgment error may be brought and judgment given as on a special case stated by consent.*

Extended to Ireland by the Probate Duty Act, 1861 (24 & 25 Vict. c. 92), s. 2. Repealed, so far as it relates to England, by the Crown Suits, &c. Act, 1865, s. 53 and Sched. III. Words in italics repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

See now Ords. XXXIV., LVIII., applied by Ord. LXVIII., r. 2.

Powers of 1 Will. IV. c. 22, &c. as to examination of witnesses, and of sects. 46th, 47th, 48th, and 49th of 15 & 16 Vict. c. 76, extended to revenue proceedings.

16. *All the powers, authorities, and provisions contained in an Act passed in the first year of the reign of King William the Fourth, intituled "An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories," and of the Act of the thirteenth year of King George the Third, recited therein, as to the examination of witnesses within and out of the jurisdiction of the Superior Courts of Common Law at Westminster, and as to the attendance of witnesses, production of documents, costs thereof, and other matters relating to such examinations, and all the powers, authorities, and provisions contained in the forty-sixth, forty-seventh, forty-eighth, and forty-ninth sections of the "Common Law Procedure Act, 1854," are hereby extended to all suits and proceedings on the Revenue side of the said Court of Exchequer; and if upon any examination under this enactment any person wilfully and corruptly give any false evidence, he shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county where such evidence is given, or in the county of Middlesex if the evidence be given out of England.*

Persons giving false evidence guilty of perjury.

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Revenue causes may be tried without a commission.

17. *From and after the passing of this Act it shall be lawful for all justices of assize, and they are hereby authorized and empowered, on their respective circuits to try suits and proceedings pending on the Revenue side of the Court of Exchequer, and to proceed thereon in like manner as they can or may do*

in respect of causes pending on the plea side of the said Court, and it shall not be necessary hereafter to issue any commission from the Revenue side of the said Court for that purpose.

Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

18. *No judgment in any cause on the Revenue side of the Exchequer shall be reversed or avoided for any error or defect therein unless error be commenced or brought and prosecuted with effect within six years after such judgment signed or entered of record: Provided that if the party entitled to bring error be at the time of such title accrued within the age of twenty-one years, feme covert, non compos mentis, or beyond the seas, the Court or a judge may allow error to be brought at any other time.* *Error to be brought within six years. Proviso as to disabilities.*

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). See now Ord. LVIII., applied by Ord. LXVIII., r. 2.

19. *A writ of error shall not be necessary or used in any suit or proceeding in error on the Revenue side of the Court of Exchequer, and the proceeding to error shall be a step in the cause, and shall be taken in manner and subject as to such terms and conditions as to giving bail or security as may be directed by any rule or order made by the Barons under this or any other Act or Acts of Parliament authorizing the same: Provided that nothing herein contained shall invalidate any proceedings already taken or to be taken by reason of any writ of error issued before the commencement of this Act, or before such rules and orders come into effect.* *Writ of error abolished.*

See note to sect. 18.

20. *Either party may tender a bill of exceptions on the trial of any issues arising on the Revenue side of the Court, and the like proceedings may be had and taken thereon as in such cases between subject and subject.* *Bill of exceptions.*

See note to sect. 18.

21. The costs of all suits, informations, and other proceedings, and of any interlocutory matter or proceeding on the Revenue side of the Court of Exchequer, whether in law or equity, may be adjudged, decreed, or ordered by the Court or a judge between the Crown and the subject on the same principles as such costs are now allowed between subject and subject, so far as such principles may be applicable, subject to such rules and orders as to the allowance of such costs as may be made by the Barons under this or any other Act of Parliament authorizing the same; and it shall be lawful for the Commissioners of Her Majesty's Treasury, and they are hereby required to pay costs directed to be paid by the Crown out of any monies which may hereafter be voted by Parliament for that purpose. *Costs.*

Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See now Ord. LXV., applied by Ord. LXVIII., r. 2. See also the Crown Suits Act, 1855, ss. 1, 2, and notes thereto, and the general discussion as to Crown costs above, pp. 613, 618.

22. *No pleading on the Revenue side of the Court of Exchequer shall be deemed insufficient for any imperfection, omission, defect in or lack of form, or formal commencement or conclusion, or for the want or omission of an averment of any matters unnecessary to be proved.* *Defect in form not to invalidate pleadings.*

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). See Ord. XXVIII., r. 12, applied by Ord. LXVIII., r. 2.

Process on estreats may issue without reference to any seal day.

23. Unless stayed by Order of the Court of Exchequer, or a Baron thereof, or by warrant of the *Commissioners of Her Majesty's Treasury*, process for duly levying and enforcing payment of all fines, issues, amerciaments, penalties, and forfeited recognizances, estreated into the Court of Exchequer and not lawfully vacated and discharged, may be issued by Her Majesty's Remembrancer at any time or times without reference to any seal day, and so from time to time until the same shall be fully paid or levied, vacated or discharged.

Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See p. 229.

Provision for the recovery of a debt of record due to Her Majesty, where the party liable resides in another jurisdiction.

24. For the recovery of any debt which by record in Her Majesty's Court of Exchequer in England has become or shall become due to Her Majesty, in any case where the person of the debtor, or the estate or effects of such debtor, may be within the jurisdiction of the Court of Exchequer in Scotland or Ireland, a copy of the record of such debt may be exemplified and transmitted under the Great Seal of the said Court of Exchequer in England, to such other of Her Majesty's said Courts of Exchequer having jurisdiction in the place where the person liable to payment of such debt happens to reside, or where his estate or effects may be, and the Court to which such exemplified copy is transmitted shall cause such copy to be forthwith enrolled in the rolls of the said Court; and upon the same being so enrolled, the said Court shall cause execution or other process to issue for recovering or levying the said debt so due to Her Majesty, according to the rules and practice of such Court, in like manner in all respects as if such record had been originally entered or filed in such Court, or the said debt had originally accrued within the jurisdiction thereof; and the proceeds of such debt, when so recovered, shall be accounted for and paid over in the same manner as if the same had been recovered within the jurisdiction of the Court in which such debt originally accrued.

See pp. 152, 222.

The Crown may re-enter on lands to enforce right of re-entry without inquisition taken.

25. When a right of re-entry upon lands or other hereditaments shall have accrued to Her Majesty or her successors, such right may be exercised or enforced without any inquisition being taken or office being found, or any actual re-entry being made on the premises.

Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See p. 431.

Rules may be made by the Barons as to the process, practice, and pleading in Revenue.

26. It shall be lawful for the Lord Chief Baron and two or more Barons of the Court of Exchequer from time to time to make all such rules and orders as to the process, practice, and mode of pleading on the Revenue side of the Court, and as to the allowance of costs, and for the effectual execution of this Act, and the intention and objects thereof, as may seem to them necessary and proper; and also from time to time by any such rule or order to extend, apply, or adapt any of the provisions of the "*Common Law Procedure Act, 1852*," and the "*Common Law Procedure Act, 1854*," and any of the rules of pleading and practice on the Plea side of the said Court to the Revenue side of the said Court, as may seem to them expedient for making the process, practice, and mode of pleading on the Revenue side of the said Court as nearly as may be uniform with the process, practice, and mode of pleading on the Plea side of such Court.

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). The Rules made under this section, which are still in force, are printed below, p. 753.

27. *Such new or altered writs and forms of proceedings and scales of costs for the Revenue side of the said Court may be issued, altered, taken, and acted on as the said Lord Chief Baron and Barons shall from time to time think fit to order, and all such writs and proceedings shall be acted on and enforced in such and the same manner as the writs and proceedings on the Revenue side of the said Court are now acted on and enforced, or as near thereto as the circumstances of the case will admit; and any existing form of writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied under the powers of this Act.*

New forms of writs and proceedings may be made.

See notes to sect. 26.

28, 29. [Relating to sheriffs' accounts, were repealed by the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 39 and Sched. III.]

30. The form of writ in the schedule to this Act shall be substituted for the form in Schedule (A.) to the Act of the third year of King George the Fourth, chapter forty-six, *and section one of the Act of the fourth year of King George the Fourth, chapter thirty-seven, amending the said Act of the third year of the same reign, shall be construed as if the words "lands or tenements" were omitted therein.*

Form in schedule to be substituted for that in Schedule (A.) to 3 Geo. 4, c. 46.

Words in italics repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22). The Acts referred to are the Levy of Fines Acts, 1822 and 1823, by the Short Titles Act, 1896.

Construction of sect. 1 of 4 Geo. 4, c. 37.

31. *Section fourteen of the said Act of the third year of King George the Fourth shall be and is hereby repealed.*

Sect. 14 of 3 Geo. 4, c. 46, repealed.

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

32. The Clerks of Assize, and the Clerk of the Crown for the County Palatine of Durham and Sadberge, by whom respectively any fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited would, if this Act had not been passed, have been certified or estreated in or into the Exchequer, shall not so certify or estreat the same or transmit any account thereof to the Commissioners for auditing the public accounts, but every such Clerk of Assize and such Clerk of the Crown respectively shall in the like cases and at the like times in and at which he would, if this Act had not been passed, have certified or estreated such fines, issues, amerciaments, penalties, and recognizances as aforesaid, copy on a roll such fines, issues, amerciaments, penalties, and recognizances, together with the names and residences, trades, professions, or callings of the parties, and distinguish such as have been paid, and send a copy of such roll, with a writ, according to the form and effect in the Schedule to this Act, to the sheriff, bailiff or officer of the county, city, borough, or place having execution of process therein in which the parties liable to the payment of such fines, issues, amerciaments, penalties, and recognizances are stated to be resident, and such copy and writ shall be the authority to such sheriff, bailiff, or officer for proceeding to the immediate levying and recovering of such fines, issues, amerciaments, penalties, and recognizances on the goods and chattels of such parties, or for taking into custody their bodies in case sufficient goods and chattels be not found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until payment be made or he be discharged by the authority of the Commis-

Clerks of assize now required to estreat fines, &c. into the Exchequer, to send process to the sheriff.

sioners of Her Majesty's Treasury, or otherwise in due course of law; and it shall be competent for such Commissioners to give authority under their hands for such discharge, either absolutely or on such terms and conditions as they may see fit: Provided always, that where the residences of the parties in such roll liable as aforesaid are not all in one county, borough, city, or place, then a copy of so much only of such roll as relates to the fines, issues, amerciaments, penalties, and recognizances to be paid by the parties resident in each county, city, borough, or place shall be sent with such writ as aforesaid to the sheriff, bailiff, or officer having execution of process therein.

Oath of clerk
of assize send-
ing process.

33. The Clerk of Assize and Clerk of the Crown respectively shall, before sending such writ as aforesaid to any such sheriff, bailiff, or officer, make oath before a judge of one of Her Majesty's superior Courts of Record at Westminster, or before any commissioner for taking affidavits in the same Courts, or to administer oaths in Chancery, which oath shall be endorsed on the back of the said roll attached thereto; and such oath shall be in the form following:—

“I, _____, make oath, that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, penalties, and recognizances which in right and due course of law ought to be levied and paid are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed all such fines, issues, amerciaments, penalties, and recognizances as have been paid to or received by me, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever.

“So help me GOD.”

Return of
writ to the
Treasury.

34. The sheriff, bailiff, or officer to whom any such writ as aforesaid is sent shall, on such day as the Commissioners of Her Majesty's Treasury may from time to time, by warrant under their hands, direct, return such writ to such Commissioners, and shall state on the back of the said roll what has been done in the execution of such process.

Until fines,
&c. are levied,
sheriff to
retain writ,
which shall
continue in
force and be
authority to
act upon.

35. The sheriff, bailiff, or other officer to whom the said writ is sent, shall, until all the said fines, issues, amerciaments, penalties, and recognizances have been paid or recovered or discharged, or it be duly ascertained to the satisfaction of the *Commissioners of Her Majesty's Treasury*, that the party in default has not any goods or chattels in the county, city, borough, or place of such sheriff, bailiff, or officer, or in any other county, city, borough, or place in England in which a levy can be made, and that such party cannot be found or that his body cannot be lodged in any of Her Majesty's gaols, keep and detain in the possession of such sheriff, bailiff, or officer the writ so directed to him and the roll attached to such writ, delivering to the *said Commissioners of Her Majesty's Treasury* a copy of such roll on the day on which he is required to return such writ, and also a copy of any former roll or rolls in which the fines, issues, amerciaments, penalties, and recognizances have not been paid or discharged; and the original writ and roll or writs and rolls sent to the sheriff, bailiff, or other officer, shall continue in force and effect, and shall be sufficient authority without any further writ or roll, for the levying of the said fines, issues, amerciaments, penalties, and recognizances, and such sheriff, bailiff, or other officer is hereby authorized and required on quitting his office to deliver over to his successor all rolls and writs in his possession, particularizing any fines, issues, amerciaments, penalties, and recognizances remaining unpaid or undischarged in order that the sheriff, bailiff, or other officer coming into the office may use every means in his power for recovering the sums unpaid and

not charged to his predecessors on the passing of his accounts before any person duly authorized to pass the same.

Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

36. In all cases where the party incurring or subject to the payment of any fine, issue, amerciamment, penalty, or recognizance resides or has fled or removed from or out of the jurisdiction of the sheriff, bailiff, or officer to whom any such writ as aforesaid has been directed, such sheriff, bailiff, or officer shall issue his warrant, together with a copy of the said writ, directed to the sheriff, bailiff, or other officer acting for the county, city, borough, or place in which such person then resides or is, or in which his goods or chattels may be found, requiring such sheriff, bailiff, or other officer to execute such writ; and every such last-mentioned sheriff, bailiff, or other officer is hereby authorized and required to act in all respects under such warrant in the same manner as if the original writ had been delivered to him, and the said sheriff, bailiff, or other officer is hereby required within thirty days after the receipt of such warrant to return to the sheriff, bailiff, or other officer from whom he received the same what he has done in the execution of such process; and in case a levy has been made, to pay over all monies received in pursuance of the warrant to the sheriff, bailiff, or officer from whom he received the same.

Where a party resides in another county, &c., or has removed, sheriff to issue his warrant to the sheriff of the other county, &c.

37. Every sheriff, bailiff, or other officer as aforesaid neglecting to do or perform any duty by this Act required shall forfeit and pay such sum as in section ten of the said Act of the third year of King George the Fourth is provided for such neglect as therein mentioned, and to be recovered in like manner.

Penalty on sheriff for neglect.

38. The *Commissioners of Her Majesty's Treasury*, or the party liable to pay any fine, issue, amerciamment, penalty, or recognizance which, if this Act had not been passed, would have been certified or estreated into the Exchequer, may, by notice in writing to the Clerk of Assize or Clerk of the Crown directed by this Act to proceed as hereinbefore provided for causing the same to be levied, require such Clerk of Assize or Clerk of the Crown, within twenty days after such notice, to return the estreat thereof into the office of the Queen's Remembrancer in the Exchequer, there to be enrolled, and such estreat shall be returned and enrolled accordingly; and any and the like proceedings may be had and taken, by motion or otherwise, in the Court of Exchequer, in respect of such estreat so enrolled, as might be had and taken in the case of any fine, issue, amerciamment, penalty, or recognizance lawfully certified or estreated into the Exchequer in the ordinary course of law.

Estreats may be required to be enrolled in the Exchequer.

Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

39. All fines, issues, amerciamments, penalties, and forfeitures now from time to time set over by Her Majesty's Remembrancer to corporations, lords of liberties, and others entitled thereto, shall after the passing of this Act be set over by such person as the Commissioners of Her Majesty's Treasury may direct, and the books of reference to such corporations, lords of liberties, and others now in the office of Her Majesty's Remembrancer, or copies thereof, or of such parts thereof as may be necessary, shall be delivered to such Commissioners or such person as they may direct.

Provision as to setting over fines, &c.

40. *Every recognizance forfeited at any inquest to be holden before the coroner of any county, city, town, liberty or place in England, shall be certified by such* *Recognizances forfeited at coroners'*

inquests to be returned to clerks of the peace, as in the case of fines imposed by coroners.

coroner to the Clerk of the Peace for the county, riding, division, or place in which the person forfeiting such recognizance shall reside, on or before the first day of the Quarter Session of the Peace then next ensuing, and such coroner shall cause a copy of such certificate to be served upon the person liable to the payment of such forfeiture by leaving it at his residence; and every such Clerk of the Peace shall proceed to act in respect of such forfeiture as in the case of fines certified by coroners pursuant to section seventeen of the Act passed in the seventh and eighth years of Her Majesty, chapter ninety-two, and such forfeiture shall be levied and applied in like manner, and subject to the like powers, provisions, and penalties, as such fines.

Repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45 and Sched. III. For the similar provisions now in force, see sect. 19 (4), (5) of that Act.

Original rolls not to be returned into Exchequer.

41. *The rolls known as Originalia Rolls shall cease to be returned or sent from the Petty Bag Office of the Court of Chancery into the Court of Exchequer.*

Repealed by the Supreme Court of Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 29 and Sched. II.

42. [Relating to the approval of the Sheriffs of London and Middlesex, was repealed by the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 39 and Sched. III.]

As to rents rendered by the Corporation of London before the Court of Exchequer.

43. And whereas it has been the custom on the occasion of the presentation of the Sheriffs of the City of London and Sheriff of Middlesex elect for the approval of the Crown to the Barons of the Court of Exchequer at Westminster to render, on behalf of the Corporation of the said City, in open Court, certain ancient rents and services in respect of the tenure of a piece of waste ground called the Moors, in the County of Salop, and of a tenement called "The Forge," in the parish of Saint Clement Danes, in the County of Middlesex:

The said rents and services in respect of the said ground and tenement may be rendered by the Corporation of London, or by their agent in that behalf, at the office of the Queen's Remembrancer on the morrow of Saint Michael, or between that day and the morrow of Saint Martin, and the proper entries in respect thereof shall be made as heretofore on the rolls of the Court.

Saving rights herein named.

44. Save as herein expressly provided, nothing in this Act shall affect or prejudice the jurisdiction or authority of the Court of Exchequer, or of the Commissioners of Her Majesty's Treasury, or any right or privilege now exercised by Her Majesty's Attorney-General on behalf of the Crown.

SCHEDULE.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:

To the sheriff or bailiff or officer [*as the case may be*] for the county of [*or city, borough, or place, as the case may be*], greeting.

You are hereby required and commanded, as you regard yourself and all yours, that you omit not, by reason of any liberty in your county, city, borough, or place [*as the case may be*], but that you enter the same, and of all the goods and chattels of all and singular the persons in the roll to this writ annexed, you cause to be levied all and singular the debts and sums of money upon them in the same roll severally charged, so that the money may be ready for payment at the [*time of the return of the writ*], to be paid over in such manner as the Commissioners of Her Majesty's Treasury may direct; and if

any of the several debts cannot be levied, by reason of no goods or chattels being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the gaol (of the county, city, &c.), there to remain until they pay the same, or be discharged by the authority of the said Commissioners or otherwise in due course of law.

Dated the day of in the year of our reign.

[Signature]

Clerk of Assize or Clerk of the Crown
[as the case may be].

THE PETITIONS OF RIGHT ACT, 1860.

(23 & 24 VICT. c. 34.)

An Act to amend the Law relating to Petitions of Right, to simplify the Proceedings, and to make Provisions for the costs thereof. [3rd July, 1860.]

Whereas it is expedient to amend the law relating to petitions of right, to simplify the procedure therein, to make provision for the recovery of costs in such cases, and to assimilate the proceedings, as nearly as may be, to the course of practice and procedure now in force in actions and suits between subject and subject: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

1. A petition of right may, if the suppliant think fit, be intituled in any one of the superior Courts of Common Law or Equity at Westminster in which the subject-matter of such petition or any material part thereof would have been cognizable if the same had been a matter in dispute between subject and subject, and if intituled in a Court of Common Law shall state in the margin the venue for the trial of such petition; and such petition shall be addressed to Her Majesty in the form or to the effect in the Schedule to this Act annexed (No. 1), and shall state the christian and surname and usual place of abode of the suppliant and of his attorney, if any, by whom the same shall be presented, and shall set forth with convenient certainty the facts entitling the suppliant to relief, and shall be signed by such suppliant, his counsel or attorney.

Petitions of Right may be intituled in any of the Superior Courts at Westminster.

The form, nature, and contents of the petition as in Schedule No. 1.

As to the title, see above, p. 367; as to the venue, p. 379; as to the form of the petition of right, pp. 373, 375.

2. The said petition shall be left with the Secretary of State for the Home Department, in order that the same may be submitted to Her Majesty for Her Majesty's gracious consideration, and in order that Her Majesty, if she shall think fit, may grant her fiat that right be done, and no fee or sum of money shall be payable by the suppliant on so leaving such petition, or upon his receiving back the same.

Petition to be left with the Secretary of State for the Home Department for Her Majesty's fiat.

See above, pp. 375, 376.

Upon fiat being obtained, petition, &c. to be left at office of Solicitor of the Treasury endorsed as in Schedule No. 2.

3. Upon Her Majesty's fiat being obtained to such petition, a copy of such petition and fiat shall be left at the office of the Solicitor to the Treasury, with an endorsement thereon in the form or to the effect in the Schedule (No. 2) to this Act annexed, praying for a plea or answer on behalf of Her Majesty within twenty-eight days, and it shall thereupon be the duty of the said solicitor to transmit such petition to the particular department to which the subject-matter of such petition may relate, and the same shall be prosecuted in the Court in which the same shall be intituled, or in such other Court as the Lord Chancellor may direct.

See above, pp. 382, 384.

Time for answering by the Crown.

4. The time for answering, pleading or demurring to such petition, on behalf of Her Majesty, shall be the said period of twenty-eight days after the same, with such prayer of a plea or answer as aforesaid, shall have been left at the office of the Solicitor to the Treasury, or such further time as shall be allowed by the Court or a judge: Provided always, that it shall be lawful for the Lord Chancellor, on the application of the Attorney-General or of the suppliant, to change the Court in which such petition shall be prosecuted, or the venue for the trial of the same.

As to time and extension of time, see above, p. 384; as to the change of Court or venue, p. 382.

Time for answering by other persons, parties to the petition.

5. In case any such petition of right shall be presented for the recovery of any real or personal property, or any right in or to the same, which shall have been granted away or disposed of by or on behalf of Her Majesty or her predecessors, a copy of such petition, allowance and fiat shall be served upon or left at the last or usual or last known place of abode of the person in the possession, occupation, or enjoyment of such property or right, endorsed with a notice in the form set forth in the Schedule (No. 3), requiring such person to appear thereto within eight days, and to plead or answer thereto in the Court in which the same shall be prosecuted within fourteen days after the same shall have been so served or left as aforesaid; and it shall not be necessary to issue any scire facias or other process to such person for the purpose of requiring him to appear and plead or answer to such petition, but he shall within the time so limited, if it be intended by him to contest such petition, enter an appearance to the same in the form set forth in Schedule (No. 4) to this Act annexed, or to the like effect, and shall plead, answer or demur to the said petition within the time specified in such notice, or such further time as shall be allowed by the Court or a judge.

See above, p. 370.

The answer or plea to such petition.

6. Such petition may be answered by way of answer, plea, or demurrer in a Court of Equity, or in a Court of Common Law by way of plea or demurrer, or by both pleas and demurrer, by or in the name of Her Majesty's Attorney-General on behalf of Her Majesty, and by or on behalf of any other person who may in pursuance hereof be called upon to plead or answer thereto, in the same manner as if such petition in a Court of Equity were a bill filed therein, or if the petition be prosecuted in a Court of Common Law as if the same were a declaration in a personal action, and without the necessity for any inquisition finding the truth of such petition or the right of the suppliant, and such and

the same matter as would be sufficient ground of answer or defence in point of law or fact to such petition on the behalf of Her Majesty may be alleged on behalf of any such other person as aforesaid called on to plead or answer thereto.

See above, p. 385.

7. So far as the same may be applicable, and except in so far as may be inconsistent with this Act, the laws and statutes in force as to pleading, evidence, hearing and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal, and proceedings in error in suits in equity, and personal actions between subject and subject, and the practice and course of procedure of the said Courts of Law and Equity respectively for the time being in reference to such suits and personal actions, shall, unless the Court in which the petition is prosecuted shall otherwise order, be applicable and apply and extend to such petition of right: Provided always, that nothing in this statute shall be construed to give to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy before the passing of this Act.

The practice and course of procedure in action and suit between subject and subject shall extend to petitions of right, so far as applicable.

See above, pp. 387 *sqq.*

8. In case of a failure on the behalf of Her Majesty, or of any such other person as aforesaid called upon to answer or plead to such petition, to plead, answer, or demur in due time, either to such petition or at any subsequent stage of the proceedings thereon, the suppliant shall be at liberty to apply to the Court or a judge for an order that the petition may be taken as confessed; and it shall be lawful for such Court or judge, on being satisfied that there has been such failure to plead, answer, or demur in due time, to order that such petition may be taken as confessed as against Her Majesty or such other party so making default; and in case of default on the behalf of Her Majesty and any other such person (if any) called upon as aforesaid to answer or plead thereto, a decree may be made by the Court, or leave may be given by the Court, on the application of the suppliant, to sign judgment in favour of the suppliant: Provided always, that such decree or judgment may afterwards be set aside by such Court or a judge, in their or his discretion, on such terms as to them or him shall seem fit.

Decrees or judgments by default.

See above, p. 394.

9. Upon every such petition of right the decree or judgment of the Court, whether given upon demurrer upon the pleadings or upon a default to answer or plead in time, or after hearing or verdict, or in error, shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition, or such other relief as the Court may think right, and such Court may give a decree or judgment that the suppliant is entitled to such relief, and upon such terms and conditions (if any) as such Court shall think just.

Form of judgment or decree.

See above, p. 395.

10. In all cases in which the judgment commonly called a judgment of *amoveas manus* has heretofore been pronounced or given upon a petition of

Effect of judgment of *amoveas manus*.

right, a judgment that the suppliant is entitled to relief as hereinbefore provided shall be of such and the same effect as such judgment of amoveas manus.

See above, p. 395.

Costs recoverable by the Crown and any other person party to the petition.

11. Upon any such petition of right the Attorney-General or other person appearing on behalf of Her Majesty, and every such other person as aforesaid who shall appear and plead or answer to such petition, shall be entitled respectively to recover costs against the suppliant, in the same manner, and subject to the same restrictions and discretion, and under the same rules, regulations, and provisions, so far as they are applicable, as are or may be usually adopted or in force touching the payment or receipt of costs in proceedings between subject and subject, and for the recovery of such costs such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon judgments in personal actions or decrees, rules or orders, shall and may be prosecuted, sued out, and executed respectively by or on behalf of Her Majesty and of such other person as aforesaid as shall appear and plead to such petition, and any costs recovered on behalf of Her Majesty shall be paid into the Exchequer, and shall become part of the Consolidated Fund, except where such petition shall be defended on behalf of Her Majesty in her private capacity, in which case such costs shall be paid to the Treasurer of Her Majesty's Household, or such other person as Her Majesty shall appoint to receive the same.

See above, pp. 368, 397, 398.

The suppliant to be entitled to costs against the Crown and other parties to the proceedings.

12. Upon any such petition of right the suppliant shall be entitled to costs against Her Majesty, and also against any other person appearing or pleading or answering to any such petition of right, in like manner, and subject to the same rules, regulations, and provisions, restrictions, and discretion, as far as they are applicable, as are or may be usually adopted or in force touching the right to recover costs in proceedings between subject and subject; and for the recovery of any such costs from any such person, other than Her Majesty, appearing or pleading or answering in pursuance hereof, to any such petition of right, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon rules, orders, decrees, or judgments in personal actions between subject and subject shall and may be prosecuted, sued out, and executed on behalf of such suppliant.

See above, p. 398.

Decree or judgment in favour of the suppliant to be certified to the Treasurer or the Treasurer of the Household in form of Schedule No. 5.

13. Whenever, upon any such petition of right, a judgment, order, or decree shall be given or made that the suppliant is entitled to relief, and there shall be no rehearing, appeal, or writ of error, or in case of an appeal or proceedings in error a judgment, order, or decree shall have been affirmed, given, or made that the suppliant is entitled to relief, or upon any rule or order being made entitling the suppliant to costs, any one of the judges of the Court in which such petition shall have been prosecuted shall and may, upon application in behalf of the suppliant, after the lapse of fourteen days from the making, giving, or affirming of such judgment or decree, rule, or order, certify to the *Commissioners of Her Majesty's Treasury*, or to the Treasurer of Her Majesty's Household, as the case may require, the tenor and purport of the same, in the form in the Schedule

(No. 5) to this Act annexed, or to the like effect; and such certificate may be sent to or left at the Office of the *Commissioners of Her Majesty's Treasury*, or of the Treasurer of Her Majesty's Household, as the case may be.

See above, p. 396. Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

14. It shall be lawful for the *Commissioners of Her Majesty's Treasury* and they are hereby required to pay the amount of any moneys and costs as to which a judgment or decree, rule, or order shall be given or made that the suppliant in any such petition of right is entitled, and of which judgment or decree, rule, or order the tenor and purport shall have been so certified to them as aforesaid, out of any moneys in their hands for the time being legally applicable thereto, or which may be hereafter voted by Parliament for that purpose, provided such petition shall relate to any public matter; and in case the same shall relate to any private property of or enjoyed by Her Majesty, or any contract or engagement made by or on behalf of Her Majesty, or any matter affecting Her Majesty in her private capacity, a certificate in the form aforesaid may be sent to or left at the Office of the Treasurer of Her Majesty's Household, or such other person as Her Majesty shall from time to time appoint to receive the same, and the amount to which the suppliant is entitled shall be paid to him out of such funds or moneys as Her Majesty shall be graciously pleased to direct to be applied for that purpose.

Satisfaction
of the judg-
ment and
costs.

See above, pp. 368, 396. Words in italics repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

15. It shall be lawful for the judges of the said Courts of Law and Equity respectively, or any three or more of the judges of the Court of Chancery, of whom the Lord Chancellor shall be one, and for any eight or more of the judges of the Courts of Common Law, of whom the chiefs of each of the said Courts shall be three, from time to time to make all such general rules and orders in their said respective Courts of Law and Equity, for regulating the pleading and practice on such petitions of right, and for the effectual execution of this Act and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the several matters herein contained, and the performance thereof, and for the government and conduct of the officers of their respective Courts in and relating to the distribution and performance of the duties and business to be done or performed in execution of this Act, as such judges may think fit, reasonable, necessary, or proper, and to frame such writs and forms of proceedings as to them may seem expedient for the purposes aforesaid; and all such rules, orders, or regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making of the same, or if Parliament be not sitting then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until three months after the same shall have been so laid before both Houses of Parliament; and any rule, order, or regulation so made shall from and after such time aforesaid be binding and obligatory on the said Courts, and on any Courts of Error or Appeal into which any judgments or decrees of the said Courts shall be carried by any writ of error or appeal, and be of the like force and effect as if the provisions contained therein had been expressly enacted by Parliament: Provided always, that it shall be lawful for the Queen's most excellent Majesty, by any proclamation inserted in the London Gazette, or for either of the Houses of Parliament, by any resolution passed at any time within three months next after such rules, orders, and regulations shall have

Power to
judges to make
rules and
regulations, &c.

See above, pp. 387, 400. This section was repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). The Chancery Rules made under this section, which are still in force, are printed below, p. 804. No rules have ever been made under this section for the Courts of Common Law.

16. In the construction of this Act the words "*Her Majesty*" shall extend to and include *Her Majesty's successors*; and the words "Lord High Chancellor" and "Lord Chancellor" respectively shall mean and include Keeper of the Great Seal and Commissioners for executing the Office of Lord Chancellor or Keeper of the Great Seal; the word "Court" shall be understood to mean any one of the superior Courts of Common Law or Equity at Westminster in which any such petition is presented; the word "relief" shall comprehend every species of relief claimed or prayed for in any such petition of right, whether a restitution of any incorporeal right, or a return of lands or chattels, or a payment of money or damages, or otherwise; and the word "judge" shall be understood to mean a judge or Baron of any of the said Courts respectively; and wherever in this Act, in describing or referring to any person, party, or thing, any word importing the singular number or masculine or feminine gender is used, the same shall be understood to include and be applicable to several persons and parties as well as one person or party, and to females as well as males, and males as well as females, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided, or there be something in the subject or context repugnant to such construction.

17. In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Petitions of Right Act, 1860."

18. Nothing in this Act contained shall prevent any suppliant from proceeding as before the passing of this Act.

SCHEDULE referred to in the foregoing Act.

In the Queen's Bench [*or* Common Pleas, *or* Exchequer of Pleas, *or* in Chancery].

[*Middlesex*] } The humble petition of A. B., of _____, by his Attorney, E. F.,
to wit. } of _____, sheweth that [*state the facts*].

Your suppliant therefore humbly prays that, &c.

or C. D., Counsel for A. B.

or E. F., Attorney for A. B.

For the proper titles at the present day see the precedents above, pp. 401, 416.

No. 2.

The suppliant prays for a plea or answer on behalf of Her Majesty within twenty-eight days after the date hereof, or otherwise that the petition may be taken as confessed.

No. 3.

To A. B.

You are hereby required to appear to the within petition, in Her Majesty's Court of Queen's Bench [Common Pleas, *or* Exchequer, *or* High Court of Chancery], within eight days, and to plead or answer thereto within fourteen after the date hereof.

Take notice, that if you fail to appear or plead or answer in due time the said petition may, as against you, be ordered to be taken as confessed.

Dated, &c.

No. 4.

In the Queen's Bench [*or* Common Pleas, *or* Exchequer of Pleas, *or* in Chancery].

Petition of Right.

A. B., suppliant,

v.

The Queen.

C. D., appears in person.

E. F., Attorney for C. D., appears for him.

If the appearance be in person, the address of the party appearing to be given.

Entered the day of 186 .

No. 5.—*Certificate of a Judge of the Court of the Tenor and Purport of the Judgment or Decree.*

To the Commissioners of Her Majesty's Treasury [*or* the Treasurer of Her Majesty's Household].

Petition of Right of A. B. in Her Majesty's Court of Queen's Bench [Common Pleas, *or* Exchequer, *or* High Court of Chancery] at Westminster.

I humbly certify, that on the day of A.D. it was, by the said Court of Queen's Bench [Common Pleas, *or* Exchequer, *or* High Court of Chancery] adjudged [*or* decreed *or* ordered] that the above-named suppliant was entitled to, &c.

Judge's Signature.

THE CROWN SUITS, &c. ACT, 1865.

(28 & 29 VICT. c. 104.)

[Throughout this Act "King's Bench Division of the High Court of Justice" should be substituted for "Court of Exchequer."]

An Act to Amend the Procedure and Practice in Crown Suits in the Court of Exchequer at Westminster; and for other Purposes. [5th July, 1865.]

[Enacting clause repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).]

Part I.—PRELIMINARY.

1. This Act may be cited as the Crown Suits, &c. Act, 1865.

Short title.

2. This Act shall be deemed to be divided into five parts, as follows:—

Division of
Act into parts.

Part I., Preliminary:

Part II., relating to proceedings by English information in the Court of Exchequer:

Part III., relating to proceedings at law on the Revenue side of the Court of Exchequer :

Part IV., relating to certain other classes of proceedings where the Crown is interested :

Part V., relating to recovery of succession, legacy, and probate duty in certain cases.

Extent of Act. 3. This Act shall extend to England only.

Commencement of Act. 4. *This Act shall commence from and immediately after the first day of November one thousand eight hundred and sixty-five; general Rules under this Act may nevertheless be made before that time, but not so as to commence before it.*

Repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

Construction, as to Attorney-General, &c. 5. With respect to the construction of this Act, the following provisions shall have effect:—

- (1.) The provisions of this Act relative to Her Majesty's Attorney-General shall be construed as applying also to Her Majesty's Solicitor-General, when a vacancy in the office of Attorney-General or other occasion so requires :
- (2.) The provisions of this Act relative to the Crown, or to Her Majesty in right of the Crown, shall be construed as applying also to the Duchy of Lancaster, or to Her Majesty in right of that Duchy, when the case so requires :
- (3.) The terms "party" and "parties" where used in this Act include, and the same terms where used in any enactment extended and applied by this Act shall for the purposes of this Act include, Her Majesty's Attorney-General, and the Attorney-General of the Prince of Wales and Duke of Cornwall, as the case may require :
- (4.) The term "a judge" where used in this Act means any judge of one of Her Majesty's Superior Courts of Law at Westminster transacting business out of Court.

Part II.—PROCEEDINGS BY ENGLISH INFORMATION IN THE COURT OF EXCHEQUER.

[See above, pp. 241 *sqq.*]

Interpretation of terms in Part II.

6. In this part of this Act—

The term "the Court of Exchequer" or "the Court" means Her Majesty's Court of Exchequer at Westminster exercising jurisdiction or authority in suits relating to the revenues of the Crown and of the Duchies of Lancaster and Cornwall instituted and conducted according to the forms of equitable procedure :

The term "Information" means an information, styled an English information, exhibited in the Court of Exchequer in the name of Her Majesty's Attorney-General, or of the Attorney-General of the Prince of Wales and Duke of Cornwall, as the informant, and includes an information and bill :

The term "suit" or "cause" means a suit or cause commenced by information :

and, except as expressly provided otherwise, nothing in this part of this Act shall be deemed to apply to any proceedings other than proceedings in suits commenced by information,

7. An information shall be printed, and shall be received and filed in print, and not otherwise. Printing of information.
8. The writ of subpoena to appear to and answer an information, and the writ of distringas against a corporation to appear to an information, are hereby abolished; and in lieu of the service of such writs respectively there shall be served a printed information having an indorsement thereon in the form given in the First Schedule to this Act, with such variations as circumstances require. Abolition of subpoena and distringas, and substitution of service of printed information.
9. Except in case of a corporation aggregate, such service shall be effected as service of a writ of subpoena is now effected (save that the original information shall not be produced), and shall have the same effect in all respects as service of a writ of subpoena now has; and in case of a corporation aggregate such service shall be effected by delivery of a printed information, having an indorsement thereon as aforesaid, to the mayor or other head officer, or to the town clerk, clerk, treasurer, or secretary of the corporation. Mode and effect of service of printed information.
10. The information served shall be first so marked by the proper officer of the Court as to indicate the filing of the information and the date of the filing. Printed information served to be first marked by officer.
11. A defendant shall be entitled to have as many printed copies of the information as he requires, on paying for them at such rate as general rules under this part of this Act direct. Sale to defendant of printed copies.
12. On amendment of an information the foregoing provisions shall extend and apply, *mutatis mutandis*, to the information as amended; but an information may be amended in writing in such cases as general rules direct. Amendments to be subject to same rules.
13. An information shall not contain interrogatories, but the informant within such time as general rules direct may file interrogatories for the examination of defendants from whom he requires an answer, and deliver to each such defendant, or his solicitor, a copy of the interrogatories, or of such of them as are applicable to the particular defendant. Form, &c. of interrogatories.
14. A defendant shall not be bound to put in an answer unless interrogatories have been filed, and unless a copy has been delivered as aforesaid. Defendant not bound to answer unless interrogated.
15. A defendant, whether required to answer or not, may, without leave of the Court or a judge, put in a plea, answer, or demurrer within such time as general rules direct, but after that time a defendant not required to answer shall not be at liberty to put in a plea, answer, or demurrer, except by leave of the Court or a judge; nevertheless the power of the Court or a judge to grant further time for pleading, answering, or demurring, on the application of a defendant, whether required to answer or not, shall remain unaffected. Time for defendant to put in plea, answer, or demurrer, &c.
16. An answer may contain not only the defendant's answers to the interrogatories, if any, but also such statements material to the case as he thinks fit to set forth therein. Contents of answer.
17. Commissions to take pleas, answers, disclaimers, and examinations are, with respect to pleas, answers, disclaimers, and examinations taken within the jurisdiction of the Court, hereby abolished; and any such plea, answer, disclaimer, or examination may be filed without any formalities other than such as are required in relation to an affidavit. Abolition of commissions to take answers, &c.
18. *Pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and protestations of honour in causes depending in the Court may be sworn and taken in Scotland, Ireland, the Isle of Man, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign* Swearing of answers, &c. in Scotland, &c.

parts, before any Court or judge, or before any notary public, or before any person authorized to administer oaths there, or in any foreign parts out of Her Majesty's dominions before any of Her Majesty's consuls or vice-consuls there; and every such instrument may be used and shall be admitted in evidence, saving just exceptions; and judicial and official notice shall be taken of the seal or signature of any such Court, judge, notary public, person, consul, or vice-consul affixed, appended, or subscribed to any such document.

See note to sect. 19.

*Falseswearing,
§c. perjury.*

19. Any person wilfully and corruptly swearing, declaring, affirming, or protesting falsely in any plea, answer, disclaimer, examination, affidavit, declaration, affirmation, or protestation of honour so taken out of England shall be deemed guilty of perjury in every case where, having so sworn, declared, affirmed, or protested before competent authority in England, he would be deemed guilty of perjury, and may be dealt with, indicted, tried, and (if convicted) sentenced, and his offence may be laid and charged to have been committed, in any county or place in England in which he is in custody as if the offence had been actually there committed.

Sect. 18 and this section were repealed by the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 12 and Schedule. That Act contains similar enactments, which are expressly applied to proceedings on the Revenue side of the King's Bench Division; and see Ord. XXXVIII. r. 6, applied by Ord. LXVIII. r. 2.

*Oath of
messenger
abolished.*

20. Pleas, answers, disclaimers, and examinations, whether taken by commission out of the jurisdiction of the Court or otherwise, may be filed without the oath of a messenger, and any alteration made therein before the taking thereof shall be authenticated as in the case of an affidavit.

*Alteration of
mode of
taking
evidence.*

21. By general rules the examination of witnesses on written interrogatories may be discontinued, and such amendments as from time to time seem fit may be made in the mode of taking evidence and the practice relative thereto; and for the purpose of such evidence any officer or person from time to time directed by general rules or by an order of the Court or a judge to take such evidence may administer oaths and take declarations.

*Application
of sect. 103,
17 & 18 Vict.
c. 125.*

22. The Court shall be deemed to be a Court of Civil Judicature within the meaning of section one hundred and three of the Common Law Procedure Act, 1854.

*Proceeding
in case of
abatement of
suit, &c.*

23. Where a suit becomes abated by death or otherwise, or becomes defective by reason of some change or transmission of interest or liability, an order to the effect of an order to revive, or of a supplemental decree, may be obtained as of course on an allegation of the abatement of the suit, or of the same having become defective, and of the change or transmission of interest or liability; and the parties who would in the same case be defendants to an information of revivor or supplemental information shall, when served with such order, be parties to the suit, and be bound to appear within such time and in such manner as general rules direct, subject to the following provisions:—

- (1.) It shall be open to any party so served (within such time after service as general rules direct) to apply to the Court or a judge to discharge the order on any ground that would have been open to him on an information of revivor or supplemental information:

(2.) If any party so served is under any disability other than coverture, the order shall be of no effect as against such party until a guardian *ad litem* has been appointed for such party, and such time has elapsed thereafter as general rules direct.

24. Facts or circumstances occurring after the institution of a suit may be introduced by way of amendment into the original information if the cause is otherwise in such a state as to allow of the information being amended, and if not, may be stated on the record in such manner, and subject to such regulations with respect to the proof thereof, and to the affording defendants leave and opportunity to answer and meet the same, as general rules direct. Statement of new facts on record.

25. *Writs issuing out of the Court to be executed in the Counties Palatine shall be directed and delivered to the sheriffs of those counties, and shall be executed and returned by them to the Court in all respects as writs are executed and returned by sheriffs of other counties.* Writs in Counties Palatine to be directed to sheriffs.

Repealed by the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 39 and Sched. III., which, by sect. 31, extends to the Counties Palatine.

26. *If in any suit any direction of this part of this Act or of general rules under it by mistake of parties fails to be followed, the Court or a judge may (if it seems fit), on payment of such costs as the Court or a judge directs, make such order, giving effect to and rectifying the proceedings, as appears justified by the merits of the case.* Power to Court to rectify errors in procedure.

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59).

27. Notwithstanding anything in this part of this Act or in any other Act, a writ of distringas (in such form as general rules under this part of this Act from time to time direct) to restrain the transfer of stock transferable at the Bank of England, or the payment of the dividends thereon, shall continue to be issuable from the office of the Queen's Remembrancer on behalf of Her Majesty's Attorney-General, or of the Attorney-General of the Prince of Wales and Duke of Cornwall. Saving for distringas to restrain transfer of stock, &c.

28. *The Lord Chief Baron and two or more Barons of the Court shall from time to time make such general rules as seem fit for carrying this part of this Act into execution, and for regulating the sittings of the Court, and the procedure and practice in suits by information, and in other proceedings in the Court.* Power to make general rules.

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). The Rules made under this section, which are still in force, are printed below, p. 808.

29. *Nothing in this part of this Act, or in any general rules made under it, shall apply to any suit commenced by information filed before the commencement of this Act; nevertheless in any such suit the Court or a judge may, if it seems fit, on hearing the parties, from time to time direct that the procedure and practice prescribed in this part of this Act, or in any general rules made under it, be followed in the Court in any respect.* Provision as to pending suits.

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

30. *The Commissioners of Her Majesty's Treasury, with the concurrence of the Lord Chief Baron and two or more Barons of the Court, may from time to time, if* Fees, remuneration, &c. to be appointed

*by Treasury
with concur-
rence of Barons.
28 & 29 Vict.
c. 45.*

they think fit, appoint fees to be charged on proceedings in suits in the Court, which fees shall be collected by stamps, and such provisions of the Common Law Courts (Fees) Act, 1865, as relate to the collection by stamps of the fees therein referred to, shall extend and apply to the fees to be taken under this section; and there shall be paid to any officer of the Court or other person employed in taking examinations of witnesses, or discharging other duties connected with proceedings in suits in the Court, such remuneration, if any, as the Commissioners of Her Majesty's Treasury, with the concurrence aforesaid, from time to time direct.

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). Rules made under this section, which are still in force, are printed below, p. 805.

PART III.—PROCEEDINGS AT LAW ON THE REVENUE SIDE OF THE COURT OF EXCHEQUER.

*Appeal, &c.
in proceedings
at law on
Revenue side
of Exchequer.*

31. The provisions of sections thirty-four to thirty-seven, and thirty-nine to forty-five (all inclusive), and of sections fifty-nine and ninety-five of the Common Law Procedure Act, 1854, shall extend and apply to the Revenue side of Her Majesty's Court of Exchequer at Westminster as a Court of Law (to which Court the term "the Court" when hereafter used in this part of this Act refers), in the same manner as those provisions apply to the Plea side of that Court.

The repeal of the sections of the Common Law Procedure Act, 1854, cited above, except sect. 59, by the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), does not affect their incorporation and application by this section. (See sect. 5 of that Act.) They are printed above, p. 671.

The appeal sections of the Common Law Procedure Act, 1854, were applied by this section in order that they might take the place of the *Regulae Generales* of 1863 (printed in 2 H. & C. 429; 33 L. J. Ex. 134), which were declared invalid in *A.-G. v. Sillem* (1864), 10 H. L. C. 704; 33 L. J. Ex. 209. But see now above, p. 214.

*Effect of
appeal as to
stay of
execution.*

32. In any suit or proceeding at law on the Revenue side of the Court notice of appeal shall be a stay of execution on the following condition, but not otherwise, namely,—that within eight days after the decision complained of, or before execution delivered to the sheriff, bail to pay the sum recovered and costs, or to pay costs when adjudged, be given to the same amount and be approved of in like manner as bail in error is required to be given and approved of under the rules of the Court for the time being in force, except where the Court or a judge otherwise orders; but such bail shall not be necessary where the appellant is Her Majesty, or Her Majesty's Attorney-General on behalf of Her Majesty in right of the Crown or in right of the Duchy of Cornwall, or the Attorney-General of the Prince of Wales and Duke of Cornwall, or where the appellants are the Commissioners of Inland Revenue.

See above, p. 214. This section takes the place of a similar provision in the Rules of 1863 referred to in the notes to sect. 31.

*Repeal of
sect. 36 of
18 & 19 Vict.
c. 96, and
sect. 14 of
20 & 21 Vict.
c. 62.*

33. *Section thirty-six of the Supplemental Customs Consolidation Act, 1855, and section fourteen of the Customs Amendment Act, 1857, shall, from and after the commencement of this Act, be repealed.*

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

*Evidence of
defendants,
&c.*

34. Sections two and three of the Act of the session of the fourteenth and fifteenth years of Her Majesty's reign (chapter ninety-nine), "to amend the

Law of Evidence," and the Evidence Amendment Act, 1853, shall extend and apply to proceedings at law on the Revenue side of the Court; and any proceeding at law on the Revenue side of the Court shall not, for the purposes of this Act, be deemed a criminal proceeding within the meaning of the said sections and Act as extended and applied by the present section.

See p. 220. The sections above referred to are printed above, pp. 665, 668.

35. The Revenue side of the Court, as a Court of Law, shall be deemed to be a Court of Civil Judicature within the meaning of section one hundred and three of the Common Law Procedure Act, 1854. Application of sect. 103 of 17 & 18 Vict. c. 125.

See p. 220. The section referred to is set out above, p. 672.

36. In a suit at law on the Revenue side of the Court a writ of distringas against a corporation aggregate to compel an appearance shall not be necessary; but in such a suit a writ of subpoena or scire facias (as the case may require) may issue against a corporation aggregate to compel an appearance; and service of such writ may be effected by delivery thereof, or of a copy thereof, to the mayor or other head officer, town clerk, clerk, treasurer, or secretary of the corporation; and the like proceedings to judgment may be taken on a writ of subpoena or scire facias so issued as, according to the practice for the time being of the Court of Exchequer, may be taken on a like writ issued against an individual defendant. Abolition of writ of distringas.

See p. 229.

37. In a suit at law on the Revenue side of the Court against a British subject resident out of the jurisdiction of the Court in any place except Scotland or Ireland, the informant may sue out against that person a writ of subpoena bearing an indorsement stating that the writ is for service out of the jurisdiction of the Court; and the time for appearance by the defendant to such writ shall be regulated by the distance from England of the place where he is resident; and the Court or a judge, on being satisfied by affidavit that the writ was personally served on the defendant, or that reasonable efforts were made to effect personal service thereof on him, and that it came to his knowledge, and either that he wilfully neglects to appear to the writ, or that he is living out of the jurisdiction of the Court in order to defeat the claim to which the information relates, may order from time to time that the informant be at liberty to proceed in the suit in such manner and subject to such conditions as to the Court or a judge seem fit, the time allowed for the defendant to appear being reasonable, and regard being had to the other circumstances of the case; but it shall be a condition precedent to the informant's obtaining judgment that he give proof of the merits of the claim to the satisfaction of the Court or a judge, or of the officer of the Court to whom the Court think fit to refer the matter. Suits against British subjects resident out of jurisdiction of Exchequer.

See pp. 152, 231.

38. In a suit at law on the Revenue side of the Court against a person, not a British subject, resident out of the jurisdiction of the Court in any place except Scotland or Ireland, the like proceedings may be taken as against a British subject resident out of the jurisdiction, save that in lieu of the form of writ used in that case the informant shall issue a writ of subpoena commanding the Suits against foreigners resident out of jurisdiction of Exchequer.

defendant to appear within the time therein prescribed, after service on him of notice of the writ, and shall in manner aforesaid serve a notice of the writ on the defendant; and such service shall have the same effect as service of the writ of subpoena in a suit against a British subject resident out of the jurisdiction of the Court; and thereupon, by leave of the Court or a judge, on their or his being satisfied by affidavit, the like proceedings may be had and taken as aforesaid.

See pp. 152, 231.

Forms of writs in schedule.

39. The forms of writs of subpoena and of notice given in the second schedule to this Act applicable in the respective cases aforesaid shall be used in those cases, with such variations as circumstances require, but general rules relating to the process and practice at law of the Revenue side of the Court may from time to time prescribe any such altered, additional, or substituted forms of writs of subpoena and notice for use in the respective cases aforesaid as seem fit, and the same shall be used accordingly.

See pp. 152, 231.

Omission to insert or indorse matters in or on writ not to nullify it.

40. If in any such case the informant omits to insert in or indorse on any writ or copy thereof any of the matters for the time being required to be inserted therein or indorsed thereon, such writ or copy shall not on that account be void, but it may be set aside as irregular, or it may be amended on such terms as to the Court or a judge may seem fit, either on an application to the Court or a judge for such amendment, or on an application to set aside the writ.

See pp. 152, 213, 231.

Amendment in case of substitution by mistake, &c. of one writ for another.

41. If in any such case one form of writ of subpoena is by mistake or inadvertence substituted for another, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in the suit, but on an *ex parte* application to a judge, either before or after an application to set aside such writ or any proceeding thereon, and whether the writ or notice thereof has been served or not, the writ may be amended by a judge without costs.

See pp. 152, 213, 231.

Writs for service in and out of jurisdiction.

42. A writ of subpoena for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction, and a writ of subpoena for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction.

See pp. 152, 231.

Affidavit may be sworn before a consul, &c.

43. An affidavit for the purpose of enabling the Court or a judge to make an order for liberty to proceed against a defendant resident out of the jurisdiction of the Court may be sworn at any foreign port or place before any of Her Majesty's consuls or vice-consuls there; and every affidavit so sworn may be used and shall be admitted in evidence, saving just exceptions; and judicial and official notice shall be taken of the seal or signature of the consul or vice-consul affixed or subscribed to any such affidavit.

See note to next section.

44. *If any person wilfully and corruptly makes a false affidavit before such consul or vice-consul he shall be deemed guilty of perjury, as if the false affidavit had been made in England before competent authority, and may be dealt with, indicted, tried, and (if convicted) sentenced, and his offence may be laid and charged to have been committed, in any county or place in England in which he is in custody, as if the offence had been actually there committed.* *False swearing, perjury.*

This section and sect. 43 were repealed by the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 12 and Schedule. See note to sect. 19.

45. *No repeal or other provision in this part of this Act shall affect or apply to any suit or proceeding instituted or taken before the commencement of this Act.* *Provision as to pending suits.*

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Part IV.—CERTAIN OTHER CLASSES OF PROCEEDINGS WHERE THE CROWN IS INTERESTED.

46. Where a cause in which Her Majesty's Attorney-General on behalf of the Crown is entitled to demand as of right a trial at bar is at any time depending in any of Her Majesty's Superior Courts of law at Westminster, *whether instituted before or instituted after the commencement of this Act*, and the Attorney-General states to the Court that he waives his right to a trial at bar, the following provisions shall have effect:

Provision for change of venue and for view.

- (1.) The Court, on the application of the Attorney-General, shall change the venue to any county in which the Attorney-General elects to have the cause tried:
- (2.) The Court may (if requisite) order that the sheriff of the county into which the venue is removed do cause a view to be had by jurors of that county (notwithstanding that the view must be taken and had by such sheriff and jurors out of their own county):
- (3.) For the purposes aforesaid the Court may make such orders as seem necessary or proper; and all such orders shall be binding on all sheriffs and other officers, and on all jurors and other persons concerned, and shall be sufficient warrant for the doing of everything thereby authorized or directed to be done:
- (4.) The powers of the judges of the Superior Courts of Law and of the judges of the Court of Exchequer as a Court of Revenue at law respectively to make general rules for the regulation of procedure and practice, and of costs, charges and expenses, shall extend to the making of such general rules as from time to time seem fit for the better execution of this section:
- (5.) Subject to any such rules, the provisions of the Common Law Procedure Act, 1852, and of any rules made under it, and all other law and practice for the time being in force relative to the change of venue and to views, shall extend to the cases of change of venue and view to which this section relates.

Words in italics repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14). Venue and Trial at Bar are discussed generally, above, pp. 581, 587.

47. A commission to find a debt due to the Crown shall not be necessary for authorizing the issue of an immediate extent or of a writ of *diem clausit extremum*. *Extents and writs of diem clausit extremum.*

extremum; and an immediate extent may be issued on an affidavit of debt and danger, and a writ of diem clausit extremum may be issued on an affidavit of debt and death (similar, *mutatis mutandis*, to the affidavit of debt and danger, or of debt and death, on which, after inquisition returned, an immediate extent or a writ of diem clausit extremum has been used to be issued), and on the fiat of the Chancellor of the Exchequer, or of a Baron of Her Majesty's Court of Exchequer at Westminster, or of a judge of Her Majesty's Court of Queen's Bench or Common Pleas at Westminster.

See pp. 190, 206.

Future Crown debts, &c. not to affect land till writ of execution issued and registered.

48. Any judgment, decree, or order obtained after the commencement of this Act by or on behalf of the Crown, or any recognizance entered into after the commencement of this Act on the proper account of the Crown, or any inquisition finding after the commencement of this Act a debt due to the Crown, or any obligation or specialty made after the commencement of this Act to the Crown, or any acceptance of office accepted after the commencement of this Act from or under the Crown, shall not affect any land (of whatever tenure) as to a bonâ fide purchaser for valuable consideration or a mortgagee (whether such purchaser or mortgagee have or have not notice of the judgment, decree, order, recognizance, inquisition, obligation, specialty, or acceptance of office), unless a writ of extent or of diem clausit extremum, or other writ or process of execution, in pursuance of or in relation to such judgment, decree, order, recognizance, inquisition, obligation, specialty, or acceptance of office, has been issued and registered before the execution of the conveyance or mortgage to such purchaser or mortgagee, and the payment by him of the purchase or mortgage money.

See note to next section.

Mode of registration, and discontinuance of other modes of registration.

49. The registration of such writ or process shall be effected as follows; namely,—a minute of the name of the person against whom the writ or process is issued, and of the date of the issuing thereof, and of the amount for which it is issued, shall be left with the Senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book by the name in alphabetical order of the person against whom the writ or process is issued; and no other registration of such writ or process, or of the judgment, decree, order, recognizance, inquisition, obligation, specialty, or acceptance of office, in pursuance of or in relation to which it is issued, shall be necessary for any purpose. There shall be paid for every such entry a fee of two shillings and sixpence; and all persons shall be at liberty to search the said book, with the other books in the office, on payment of a fee of one shilling.

This section and sect. 48 were repealed by the Land Charges Act, 1900 (63 & 64 Vict. c. 26), s. 5 and Schedule, and were replaced by the provisions of sect. 2 of that Act. (See p. 223, where the last-cited section is set out.)

Provisions of 25 Geo. III. c. 35, as to sale, &c. to apply in all cases.

50. The Act of the twenty-fifth year of the reign of King George the Third (chapter thirty-five), “for the more easy and effectual Sale of Lands, Tenements, and Hereditaments of Crown Debtors or of their Sureties,” shall extend to authorize the sale, subject and according to the provisions of that Act, of any land taken in execution by virtue of any writ or process of execution issued after the commencement of this Act, by any Court of Law

or Equity, for enforcing the payment of any sum of money to or in favour of the Crown.

The Crown Debtors Act, 1785, applied by this section provides (sect. 1) that the Court of Exchequer, on application by the Attorney-General in a summary way by motion, may order the right, title and interest of any debtor to the Crown and of his heirs and assigns in any hereditaments which have been extended under a writ of extent or diem clausit extremum, or so much thereof as is sufficient to satisfy the debt, to be sold, and that the property shall be conveyed to the purchaser by the King's Remembrancer under the direction of the Court by deed to be enrolled in the Court. The surplus, if any, after payment of the Crown's debt and the costs, is to be paid to the persons who were entitled to the hereditaments so sold. By sect. 2, the Court has power to order the production of the title deeds.

See further, pp. 151, 199.

51. Nothing in this part of this Act shall take away or abridge any prerogative or right of the Crown, in respect of priority or otherwise, over or against the creditors of any debtor or accountant to the Crown, and, save as in this part of this Act expressly provided, every prerogative or right of the Crown as against the land of any debtor or accountant to the Crown, or over or against the creditors of any such debtor or accountant, shall remain in all respects as if this part of this Act had not been enacted.

Saving the prerogative of the Crown.

See p. 162.

52. With respect to inquests of office or inquisitions *after the commencement of this Act* finding the title of Her Majesty in right of the Crown or in right of the Duchy of Cornwall, or the title of the Prince of Wales and Duke of Cornwall, to any real property, the following provisions shall have effect:—

Inquiry on objection to inquisition finding Crown's title.

- (1.) If in any such case a copy of the inquisition is served on any person, and such person thinks himself aggrieved by any description of boundary or other finding therein, he may within six months after such service, or within such enlarged time as Her Majesty's Court of Exchequer at Westminster or a judge may think fit to allow, file in the Office of the Court of Exchequer in which the inquisition is filed a statement in writing of his objection to the inquisition:
- (2.) On any such objection being filed, the Court of Exchequer or a Baron thereof, on the application of the proper officer on behalf of Her Majesty in right of the Crown or in right of the Duchy of Cornwall, or on behalf of the Prince of Wales and Duke of Cornwall (as the case may require), may appoint a fit person to inquire into the matter of the objection; and the person so appointed shall hold an inquiry on or near the land in question, or at some other convenient place (notice of the time and place for the holding of the inquiry being given to the person objecting); and for the purposes of such inquiry the person so appointed shall have power to summon witnesses and administer oaths:
- (3.) The person so appointed shall make a return in writing to the Court of Exchequer of the result of the inquiry, which return shall be filed in the Office in which the inquisition is filed; and if in any respect the return and the inquisition differ in effect, the inquisition shall be deemed to be altered so as to conform with the return:

- (4.) Where a copy of an inquisition is served as aforesaid, an affidavit of service shall be filed in the office in which the inquisition is filed, and an office copy of such affidavit shall be evidence of the service :
- (5.) Nothing in this section shall take away or abridge the right of any person to traverse an inquisition.

Words in italics repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14). See above, p. 434.

PART V.—RECOVERY OF SUCCESSION, LEGACY, AND PROBATE DUTY IN CERTAIN CASES.

See above, p. 186.

Enactments in Third Schedule repealed.

53. *The enactments described in the Third Schedule to this Act, as far as they relate to England, shall from and after the commencement of this Act be repealed, but not so as to affect any proceeding pending at the commencement of this Act, or any appeal or other step capable of being brought or taken therein or in relation thereto, or any right, title, obligation, liability, forfeiture or penalty acquired, accrued, or incurred before the commencement of this Act; and every such proceeding, appeal, step, right, title, obligation, liability, forfeiture, and penalty may be continued, brought, taken, maintained, and enforced as if this Act had not been passed.*

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Construction of Part V.

54. In this part of this Act—

The term “ the Succession Duty Act ” means the Succession Duty Act, 1853 :

The term “ the Legacy Duty Acts ” means the Acts for charging duties on legacies and shares of the personal estates of deceased persons, so far as those Acts relate to England :

The term “ the Court of Exchequer ” means Her Majesty’s Court of Exchequer at Westminster.

This part of this Act as far as it relates to duty under the Succession Duty Act and Legacy Duty Acts shall be read with the Succession Duty Act as one Act.

Summary proceedings for account and payment of succession or legacy duty.

55. If any person accountable for or chargeable with duty under the Succession Duty Act or the Legacy Duty Acts, required by the Commissioners of Inland Revenue to deliver an account under those Acts or any of them, makes default in doing so, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding him to deliver an account and to pay the duty and the costs of the proceedings, or to show cause to the contrary ; and on cause being shown such order shall be made as seems just.

Summary proceedings for payment of succession or legacy duty assessed.

56. Where, in pursuance of the Succession Duty Act or the Legacy Duty Acts, the Commissioners of Inland Revenue make an assessment of duty, and the duty is not paid, and there is no notice of appeal against the assessment under section fifty of the Succession Duty Act, or of disputing the liability to assessment, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding the person liable for the duty, or the owner of any property expressly charged therewith, to pay the duty payable by him and the costs of the proceedings, or to show cause to the contrary, and on cause being shown such order shall be made as seems just,

57. If any person takes possession of and in any manner administers any part of the personal estate of any person deceased without obtaining probate of his will or letters of administration of his estate within six months after his decease, or within two months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there is any such suit or dispute that is not ended within four months after the death, the Commissioners of Inland Revenue may sue out of the Court of Exchequer a writ of summons commanding the person so taking possession and administering as aforesaid to deliver to the Commissioners an account of the estate of the deceased and of its value, and to pay such duty as would have been payable if probate or administration had been obtained and the costs of the proceedings, or to show cause to the contrary, and on cause being shown such order shall be made as seems just; and any such proceedings shall be a waiver of all penalties incurred in the premises by such person as aforesaid.

Summary proceedings for payment of probate duty.

58. In proceedings by writ of summons as aforesaid the Court may, if they think fit, refer the matter to the proper officer to report thereon, and may, if they think fit, order the facts contained in his report to be stated in the form of a special case for the opinion of the Court, and give directions as to the mode of settling the case, and the matters to be contained therein, and for the production of any documents, and may, if they think fit, direct any issue or issues of fact to be tried by a jury; and the Court may proceed to give judgment on the special case, and for any amount of duty which the Court are of opinion is due to the Crown, and for costs; *and on such judgment, error may be brought and judgment given as on a special case stated by consent.*

Court may before judgment order report and special case.

Words in italics repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). See now Ord. XXXIV., applied by Ord. LXVIII. r. 2; and see further above, p. 230.

59. In proceedings by writ of summons as aforesaid, and also in cases of appeal to the Court of Exchequer from the assessment of the Commissioners of Inland Revenue under section fifty of the Succession Duty Act, an appeal shall lie from the decision of the Court or a judge on a case stated by the parties, or, if they differ, settled by the Court of Exchequer or a judge, or any officer of the Court of Exchequer, to whom the same is referred by the Court or a judge; and the Court of Appeal shall give such judgment as ought to have been given by the Court of Exchequer or judge, and may award costs.

Appeal in summary proceedings and on appeal from assessment.

60. *The appeal in all such cases as aforesaid shall be made to the Court of Error in the Exchequer Chamber, and the decision of that Court shall be subject to appeal to the House of Lords.*

Courts of appeal

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). See now Ord. LVIII., applied by Ord. LXVIII. r. 2; and further above, p. 214.

61. No such appeal shall be allowed unless notice thereof is given in writing to the opposite party or attorney, and to the proper officer of the Court of Exchequer, within four days after the decision complained of, or such further time as may be allowed by the Court or a judge; and bail shall be given and approved of as provided with respect to suits at law on the Revenue side of the Court of Exchequer,

Notice of appeal; and bail.

Power to Court
to make
general rules.

62. *The Lord Chief Baron and two or more Barons of the Court of Exchequer shall from time to time make such general rules as seem fit for carrying this Part of this Act into execution, and for regulating the procedure and practice in proceedings by writ of summons as aforesaid.*

Repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). No rules are in force under this section.

Forms of
writs in
schedule.

63. The forms of writs of summons given in the Fourth Schedule to this Act, applicable in the respective cases aforesaid, shall be used in those cases, with such variations as circumstances require; *but general rules under this Part of this Act may from time to time prescribe such altered, additional, or substituted forms of writs of summons for use in the respective cases aforesaid or any of them as seem fit, and the same shall be used accordingly.*

Words in italics repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59). No rules are in force under this section.

Application
of procedure
and practice
of Revenue
side of Court.

64. Subject to the provisions of this Part of this Act, and to general rules made thereunder, proceedings by writs of summons as aforesaid shall be deemed proceedings at law on the Revenue side of the Court of Exchequer within the meaning of sections ten, eleven and sixteen to twenty-two (both inclusive) of the Act of the session of the twenty-second and twenty-third years of the reign of Her Majesty (chapter twenty-one), "to regulate the office of Queen's Remembrancer, and to amend the practice and procedure on the Revenue side of the Court of Exchequer."

22 & 23 Vict.
c. 21.

The sections here mentioned are printed above, p. 677.

SCHEDULES.

THE FIRST SCHEDULE.

FORM OF INDORSEMENT ON ENGLISH INFORMATION UNDER PART II.

To the within-named C.D.

Victoria R.

We command you [and every of you, *where there are more defendants than one,*] that within days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Court of Exchequer at Westminster to the within-contained information, and that you observe what our said Court directs.

Witness at Westminster this day of 18 .

NOTE.—If you fail to comply with the foregoing directions an appearance may be entered for you, and you will be liable to be arrested and imprisoned [*or, in case of a corporation, to be distrained by all your lands and chattels*], and to have a decree made against you in your absence.

Appearances are to be entered at the Queen's Remembrancer's Office, Chancery Lane, London.

This indorsement should now be in the form printed above, p. 285.

THE SECOND SCHEDULE.

FORMS OF WRITS OF SUBPENA AND NOTICE UNDER PART III.

(A.)

Writ where Defendant, being a British Subject, is resident out of Jurisdiction of Court of Exchequer.

Victoria, &c.

To C.D. of in the county of

We command and strictly enjoin you, that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from England*] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Exchequer at Westminster, to answer us concerning certain articles then and there on our behalf to be objected against you; and take notice, that in default of your so doing we shall proceed thereon to judgment and execution.

Witness, &c.

[*Memorandum to be subscribed on Writ.*]

This writ is to be served within [*six*] calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

[*Indorsement to be made on Writ before service thereof.*]

At the suit of Her Majesty's Attorney-General [*or as the case may be*].

By information.

This writ is for service out of the jurisdiction of the Court of Exchequer, and is issued by E.F., the solicitor of [*as the case may be*],

[*if for penalties*],

for the forfeiture by you of pounds for penalties under the statutes relating to the Revenue of Customs [*or Excise, stamps, taxes, &c., as the case may be*];

[*or, if for duties or a debt*],

for the recovery of pounds for duties due from you under the statutes relating [*&c., as before,—or state shortly the nature of the debt*].

Take notice, that in default of your entering an appearance in the Court of Exchequer, according to the exigency of this writ, an information may be filed and judgment signed thereon, and execution issued on such judgment, together with costs, at the expiration of fourteen days from the day of signing such judgment.

Substitute "High Court of Justice" for "Court of Exchequer" and "Court of Exchequer at Westminster."

THE CROWN SUITS, &C. ACT, 1865.

(B.)

Writ where Defendant, not being a British Subject, is resident out of Jurisdiction of Court of Exchequer.

Victoria, &c.

To C. D. late of in the county of

We command and strictly enjoin you, that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from England*] days after notice of this writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Exchequer at Westminster to answer us concerning certain articles then and there on our behalf to be objected against you; and take notice, that in default of your so doing we shall proceed therein to judgment and execution.

Witness, &c.

[*Memorandum to be subscribed on Writ.*]

Notice of this writ is to be served within [*six*] calendar months from the date thereof, including the day of such date, and not afterwards.

[*Indorsements as on Writ (A).*]

See note to Form (A).

(C.)

Notice of last foregoing Writ.

To C. D. [*late of Brighton in the County of Sussex*], residing at [*Paris in France*].

Take notice, that in the name of the Attorney-General of Her Majesty Queen Victoria of the United Kingdom of Great Britain and Ireland [*or, as the case may be*], E. F., the solicitor of [*as the case may be*], has commenced proceedings at law against you C. D. in Her Majesty's Court of Exchequer at Westminster by writ of that Court dated the day of A.D. 18 ,

[*if for penalties*],

for the forfeiture by you of pounds for penalties under the statutes relating to the Revenue of Customs [*or Excise, stamps, taxes, &c., as the case may be*];

[*or, if for duties or a debt*],

for the recovery of pounds for duties due from you under the statutes relating [*&c., as before,—or state shortly the nature of the debt*].

Take notice, that you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend yourself against the said proceedings by entering an appearance in the said Court of Exchequer, and that in default of your so doing an information may be filed, and the said E. F. may, by leave of that Court or of a judge of one of Her Majesty's Superior Courts of Law at Westminster, proceed thereon to judgment and execution.

(Signed) E. F.,

Solicitor of .

See note to Form (A).

THE THIRD SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND BY PART V.

<i>Session and Chapter.</i>	<i>Title or Short Title.</i>	<i>Extent of Repeal.</i>
42 Geo. III. c. 99 ...	<i>An Act for allowing the stamping certain Deeds until the 31st day of December, 1802; for amending an Act passed in the thirty-sixth year of the reign of His present Majesty, relating to Duties on Legacies and Shares of Personal Estates; for exempting certain Legacies from the Payment of Duty; for reducing the Allowances on present Payment of Stamp Duties; and for reducing certain Stamp Duties on Policies for Sea Insurances.</i>	<i>Section two.</i>
16 & 17 Vict. c. 51...	<i>The Succession Duty Act, 1853 ...</i>	<i>Sections forty-seven and forty-eight.</i>
22 & 23 Vict. c. 21...	<i>An Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer.</i> [<i>The Queen's Remembrancer Act, 1859.</i>]	<i>Sections twelve, thirteen, fourteen, and fifteen.</i>
24 & 25 Vict. c. 92...	<i>An Act to amend the Law for the Collection of the Stamp Duties on Probates, Administrations, Inventories, Legacies, and Successions.</i> [<i>The Probate Duty Act, 1861.</i>]	<i>Section one.</i>

Repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

THE FOURTH SCHEDULE.

FORMS OF WRITS OF SUMMONS UNDER PART V.

(A.)

For Account and Payment by Executor.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, being accountable part within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said Acts, and have made default therein.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said

Commissioners of Inland Revenue an account, upon oath, of all the legacies and of all the property of the said deceased, paid or to be paid or administered by you as such execut as aforesaid, and that you do within the same time pay the duty chargeable upon the said legacies and property of the said deceased, and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our
Lord One thousand eight hundred and sixty-

The formal parts of this writ will now correspond to the formal parts of the writ of subpoena printed above, p. 260.

(B.)

For Account and Payment by Administrator.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, being accountable part within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said Acts, and have made default therein.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the personal estate and effects of the said deceased, paid or to be paid or administered by you as such administrat as aforesaid, and that you do within the same time pay the duty chargeable upon the said personal estate and effects of the said deceased, and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our
Lord One thousand eight hundred and sixty-

See note to Form (A).

(C.)

For Account and Payment by Trustee, Legatee, &c.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, being accountable part within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said Acts, and have made default therein.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said

Commissioners of Inland Revenue an account, upon oath, of and that you do, within the same time, pay the duty chargeable and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our Lord One thousand eight hundred and sixty- .

See note to Form (A).

(D.)

For Account and Payment by Successor, Trustee, &c.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, being accountable part within the true intent and meaning of the Succession Duty Act, 1853, have been required by our Commissioners of Inland Revenue to render an account, pursuant to the said Act, and have made default therein.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the property to which, or to the income whereof, became beneficially entitled as successor on the death of deceased, by reason of the disposition thereof made by and that you do, within the same time, pay the duty chargeable on the said succession and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our Lord One thousand eight hundred and sixty- .

See note to Form (A).

(E.)

For Accounts and Payment by Executor, being also Successor.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, being accountable part within the true intent and meaning of the Succession Duty Act, 1853, and the Legacy Duty Acts, have been required by our Commissioners of Inland Revenue to render an account pursuant to the said Acts, and have made default therein.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account, upon oath, of all the legacies and of all the property of the said deceased paid or to be paid or administered by you as such executor as aforesaid, and also an account of all the property to

which, or to the income whereof, you have become beneficially entitled as such successor as aforesaid upon the death of the said deceased and that you do within the same time pay the duty chargeable under the Legacy Duty Acts upon the said legacies and property of the said deceased, and also the duty chargeable under the said Succession Duty Act upon the said property as succession as aforesaid, and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our
Lord One thousand eight hundred and sixty- .

See note to Form (A).

(F.)

For Payment of Succession Duty when assessed.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, being accountable part within the true intent and meaning of the Succession Duty Act, 1853, have, as required by the said Act, delivered to our Commissioners of Inland Revenue an account of the property for the duty whereon you are accountable, and that the said Commissioners have, in pursuance of the said Act, assessed the duty on such account, but that you have made default in payment of the same, or some part thereof.

Now we, having been likewise given to understand in manner aforesaid that there has been no appeal from the said assessment, and no notice of disputing the liability to the same, command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do pay to the said Commissioners of Inland Revenue, or their proper officer, the said duty so assessed, or such part thereof as shall at the time of such service be by law due and payable, and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our
Lord One thousand eight hundred and sixty- .

See note to Form (A).

(G.)

For Account and Payment of Probate Duty.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court before our Barons of the Exchequer at Westminster, that you, having taken possession of and administered some part or parts of the personal estate and effects of

deceased, have not obtained probate of the will (or letters of administration of the estate and effects) of the said deceased within the time required by law.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to our Commissioners of Inland Revenue an account, upon oath, of the estate and effects of the said deceased, and of the true value thereof, and that you do within the same time pay to the said Commissioners of Inland Revenue such duty as would have been duly payable on such probate (or letters of administration) as aforesaid if the same had been duly obtained by you, and the costs of these proceedings; or that you the said do within the same time appear before the Barons of our said Exchequer at Westminster, and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our
Lord One thousand eight hundred and sixty- .

See note to Form A.

THE PETITIONS OF RIGHT (IRELAND) ACT, 1873.

(36 & 37 VICT. c. 69.)

An Act to provide for proceeding on Petitions of Right in the Courts of Law and Equity in Ireland. [5th August, 1873.]

Whereas an Act was passed in the session of Parliament held in the twenty-third and twenty-fourth years of the reign of Her present Majesty, intituled "An Act to amend the Law relating to Petitions of Right, to simplify the Proceedings, and to make Provision for the Costs thereof":

And whereas it is expedient to make provision for the trial of Petitions of Right in the Courts of Law and Equity in Ireland in the same manner as under the said statute they may be tried in England:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

1. This Act may upon all occasions and for all purposes be cited as "The Petitions of Right (Ireland) Act, 1873." Short title of Act.

2. Any petition of right may, if the suppliant think fit, be entitled in any one of the Superior Courts of Common Law or Equity at Dublin in which the subject-matter of such petition, or any material part thereof, would have been cognizable if the same had been a matter in dispute between subject and subject; and every such petition shall be in the form by the said Act prescribed, and upon the presentation of such petition the proceedings shall be the same as are provided for by the said Act, save and except that same may be, if Her Majesty shall be pleased to grant her fiat to that effect, prosecuted in the Court in which the same shall be so entitled, or in such other Court as the Lord Chancellor of Ireland may direct. Petition of right may be entitled in Irish Court.

See above, p. 399.

Petition must aver that cause of action arose in Ireland.

3. Provided always, that every petition so entitled shall contain an averment that the subject-matter of the said petition, or a material part thereof, arose within that part of the United Kingdom of Great Britain and Ireland called Ireland, and such averment shall be deemed to be a material and necessary statement in the case of the suppliant, and a traverse of such averment shall be deemed to be a sufficient pleading in bar of the suppliant's right to relief.

See above, p. 399.

Provisions of Petitions of Right Act to apply.

4. The provisions of the Petitions of Right Act, 1860, shall extend to and be applicable to proceedings under this Act, and shall in relation to such proceedings be construed as if the Courts of Law and Equity in Ireland had been named in such Act instead of the Courts of Law and Equity in England, and for such purposes the words "Lord High Chancellor" and "Lord Chancellor" shall be construed to mean and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the Great Seal of Ireland for the time being; the words "Her Majesty's Attorney-General" or "the Attorney-General" shall be construed to mean Her Majesty's Attorney-General for Ireland; the words "Solicitor to the Treasury" shall be construed to mean Crown and Treasury Solicitor for Ireland; and the word "Court" shall be construed to mean any one of the Superior Courts of Common Law at Dublin in which any such petition is presented, and all judgments and decrees pronounced by any Court of Law or Equity in Ireland under this Act shall have the same force and effect to all intents and purposes as judgments and decrees pronounced under the Petitions of Right Act, 1860, by any Court of Law or Equity in England: Provided always, that unless within twenty-eight days after Her Majesty's fiat to any petition has been obtained a copy of such petition and fiat shall be left at the office of the Crown and Treasury Solicitor for Ireland, endorsed in manner by the said Petitions of Right Act, 1860, prescribed, no further proceedings shall be taken or had upon such petition.

See above, p. 399.

Irish Courts to make rules.

5. The power of making rules and orders conferred upon the judges of the Court of Chancery and Common Law in England by the fifteenth section of the said Act shall and may, in relation to the proceedings under this Act, be exercised by the judges of the Courts of Chancery and Common Law in Ireland respectively, in the same manner in all respects and subject to the same provisoes and restrictions as in such section provided and contained.

See above, p. 400. No rules have been made under this section.

Forms prescribed in Petitions of Right Act to be used.

6. The forms contained in the schedule annexed to the said Act shall be applicable to proceedings under this Act, with such alterations and additions as may show that such petition is entitled and such proceedings had in one of Her Majesty's Superior Courts of Common Law or Equity in Ireland.

THE TREASURY SOLICITOR ACT, 1876.

(39 & 40 VICT. c. 18.)

An Act to incorporate the Solicitor for the affairs of Her Majesty's Treasury, and make further provision respecting the grant of the administration of the Estates of deceased persons for the use of Her Majesty. [27th June, 1876.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The person for the time being holding the office of Solicitor for the affairs of Her Majesty's Treasury (in this Act referred to as the Treasury Solicitor) shall be a corporation sole by the name of the Solicitor for the affairs of Her Majesty's Treasury, and by that name shall have perpetual succession, with a capacity to acquire and hold in that name lands, Government securities, shares in any public company, securities for money, and real and personal property of every description, to sue and be sued, to execute deeds, using an official seal, to make leases, to enter into engagements binding on himself and his successors in office, and to do all other acts necessary or expedient to be done in the execution of the duties of his office.

Treasury Solicitor constituted a corporation sole.

Any document purporting to be sealed with the said official seal shall be receivable in evidence of the particulars stated in such document.

2. Where, by reason of Her Majesty having become entitled in right of Her Crown to the personal estate of an intestate or otherwise, any Court has power to grant administration of the personal estate of any deceased person to a nominee of Her Majesty, and Her Majesty, by warrant under Her Royal Sign Manual, is pleased to nominate for that purpose the Treasury Solicitor for the time being, the Court may grant such administration for the use of Her Majesty to the Treasury Solicitor (by his official name) and his successors, or, if the warrant so provide, to some person nominated in that behalf by the Treasury Solicitor.

Grant of administration to Solicitor of Treasury.

A royal warrant may nominate the Treasury Solicitor for the purposes of this section, either in any particular case or class of cases, or in all cases, and may limit such nomination to be during Her Majesty's pleasure, or during any limited period, or otherwise, as to Her Majesty may seem fit; and may, if to Her Majesty seem fit, authorize the Treasury Solicitor to nominate some other person to take out the administration in any particular case or class of cases.

The administration so granted to the Treasury Solicitor, and the office of administrator under such grant, and all the estate, rights, duties, and liabilities of such administrator, shall, notwithstanding any change in the person who is Treasury Solicitor, be vested in and imposed on the Treasury Solicitor for the time being without any further grant of administration.

Provided that nothing in this section shall affect any limitation, in duration or otherwise, contained in the grant, or any right of any Court to revoke such grant.

Where administration is granted to the Treasury Solicitor he shall, notwithstanding that he does not give the bond which, if such administration had been granted to him as a private individual, he would be required by law to give, be subject, as regards the administration, to the liabilities and duties imposed by such bond.

Power for Assistant Solicitor to act on behalf of Treasury Solicitor.

3. An Assistant Solicitor for the affairs of Her Majesty's Treasury may, on behalf of the Treasury Solicitor, take any oath, make any declaration, verify any account, execute any deed, or do any act or thing whatsoever which the Treasury Solicitor is required or authorized under Act of Parliament or otherwise to take, make, verify, execute, or do for the purpose of an administration granted to him or for the purpose of any Act of Parliament, or otherwise in the execution of his duties as the Treasury Solicitor.

Extended to the duties of the Treasury Solicitor as Director of Public Prosecutions by the Prosecution of Offences Act, 1884 (47 & 48 Vict. c. 58), s. 2.

Disposal of money and property received under administration or forfeiture and of unclaimed grants.

4. All money, securities, and property, real or personal, received by or vested in the Treasury Solicitor under any administration, or in consequence of the same having accrued to Her Majesty as part of the personal estate of any deceased person, or under any forfeiture, or otherwise by virtue of Her royal prerogative, shall be paid, invested, transferred, sold, and disposed of in such manner as may be directed by rules under this Act, and, so far as such rules do not apply, as the Treasury direct, subject as follows :

- (1.) All such money and all money arising from such securities and property, whether as income or as the proceeds of the sale or disposal thereof, or otherwise, shall be carried to the account directed by the rules (in this Act referred to as the Crown's Nominee Account); and
- (2.) All money standing to the said account and not required for the purposes thereof shall be paid into the account of Her Majesty's Exchequer; and
- (3.) Where any money, securities, or property to which this section applies has been granted by Her Majesty to any person, and has not been claimed within the period fixed by the rules, the Treasury may direct such unclaimed securities and property to be sold and the proceeds of such sale and the said money to be paid to the Crown's Nominee Account :

Provided, that if any person satisfies the Treasury of his right under the said grant to the whole or any part of such unclaimed money, securities, or property, the Treasury may direct the sum paid to the Crown's Nominee Account in respect of the same or of the part to which such person shows himself to be entitled, to be paid to such person out of the Consolidated Fund, or the growing produce thereof.

The accounts of the receipts and expenditure on the Crown's Nominee Account shall be deemed to be public accounts; and such abstract thereof as may be directed by rules under this Act shall be annually laid before the House of Commons.

See the Rules printed below, p. 831. The period fixed under sub-sect. 3 is three years. (Rule 9.)

Rules by Treasury.

5. The Treasury may from time to time make, and when made revoke, alter, and add to, rules for carrying this Act into effect.

Every such rule shall be laid before Parliament within one month after it is made if Parliament be then sitting, or if not, within one month after the then next meeting of Parliament.

The Rules made under this section are printed below, p. 831.

6. This Act shall, so far as circumstances admit, apply, in the case of personal estate and property to which Her Majesty or any of Her Majesty's predecessors has become entitled before the passing of this Act, and of warrants given, and grants made, and acts done before the passing of this Act, and the satisfaction of claims under such grants, in like manner as it applies respectively in the case of property to which Her Majesty may become entitled after the passing of this Act, or of grants made or acts done after the passing of this Act, or the satisfaction of claims under such grants.

Application of Act to previous administrations, &c.

7. In this Act—

Definitions.

The expression "the Treasury" means the Commissioners of Her Majesty's Treasury :

The expression "administration" means letters of administration of the personal estate and effects of a deceased person, whether general or limited, or with the will annexed or otherwise, and includes confirmation in Scotland.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

8. *Nothing in this Act shall affect the rights, powers, authorities, and duties of the Queen's Proctor holding office at the time of the passing of this Act.*

Saving for existing Queen's Proctor.

Repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 30).

9. *The Act mentioned in the First Schedule to this Act is hereby repealed : Provided that—*

Repeal of Act.

- (1.) So much of the said Act as is set forth in the Second Schedule to this Act shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act ; and
- (2.) Any administration by or in pursuance of that Act vested in or granted to any person who was Treasury Solicitor shall continue in force as if it had been granted under this Act to the Treasury Solicitor by his official title ; and
- (3.) Any accounts opened in pursuance of the said Act shall continue until altered by the Treasury in pursuance of this Act, and all money, stocks, and securities standing to the said accounts shall be dealt with accordingly, and any general account opened in pursuance of the said Act shall be deemed, whilst continued, to be the Crown's Nominee Account under this Act ; and
- (4.) *This repeal shall not affect—*
 - (a) *anything duly done or suffered under the said Act hereby repealed ;*
 - or
 - (b) *any right, privilege, or liability acquired, accrued, or incurred under the said Act ; or*
 - (c) *any legal proceeding or remedy in respect of any such right, privilege, or liability.*

Words in italics repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 30), and the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

10. This Act may be cited as the "Treasury Solicitor Act, 1876."

Short title.

THE CUSTOMS CONSOLIDATION ACT, 1876.

FIRST SCHEDULE.

ACT REPEALED.

<i>Title and Chapter.</i>	<i>Title.</i>
15 & 16 Vict. c. 3	<i>An Act to provide for the Administration of Personal Estates of Intestates, and others, to which Her Majesty may be entitled in right of Her Prerogative, or in right of Her Duchy of Lancaster.</i>

Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

SECOND SCHEDULE.

PART OF 15 & 16 VICT. C. 3, S. 2, RE-ENACTED.

Duties of
Solicitor of
Duchy of
Lancaster
under ad-
ministration.

Where the administration of the personal estate of any deceased person has been granted to the Solicitor for the affairs of Her Majesty's Duchy of Lancaster, for the use of Her Majesty, that solicitor shall, notwithstanding that he does not give the bond which, if such administration had been granted to him as a private individual, he would be required by law to give, be subject, as regards the administration, to the liabilities and duties imposed by such bond.

THE CUSTOMS CONSOLIDATION ACT, 1876.

(39 & 40 VICT. C. 36.)

AS TO THE COURSE OF PROCEDURE FOR RECOVERING PENALTIES ENFORCING
FORFEITURES, AND PUNISHING OFFENDERS UNDER THE CUSTOMS ACTS.

How
penalties, &c.
to be sued for.

218. All duties, penalties, and forfeitures incurred under or imposed by the Customs Acts, and the liability to forfeiture of any goods seized under the authority thereof, may be sued for, prosecuted, determined, and recovered by action, information, or other appropriate proceeding in the High Court of Justice in England, or by action of debt, information, or other appropriate proceeding in the Superior Courts of Common Law at Dublin or Edinburgh, or in the Royal Courts of the Islands of Guernsey, Jersey, Alderney, Sark, or Man, in the name of the Attorney-General for England or Ireland respectively, or of the Lord Advocate of Scotland, or of some officer of Customs or Excise, or by information in the name of some officer of Customs or Excise, before one or more justice or justices in the United Kingdom, the Isle of Man, or the Channel Islands: Provided always, that the forty-fourth section of second and third Victoria, chapter seventy-one, shall not apply to any offence against the Customs laws; and provided that in any proceedings for any penalty or forfeiture under the Customs Acts the fact that the duties of Customs have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of any such proceedings.

Proviso
where the
duties and
penalties
sought to be
recovered
shall not
exceed 100l.

This section (sect. 11 of the Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21)) was substituted for sect. 218 by that Act, sect. 14 and Schedule.

219. In any case where a verdict is or shall have been obtained at the suit of the Crown against any defendant in any of the Superior Courts, execution thereon may issue on or after the expiration of fourteen days from the date of such verdict, in the same manner as execution may issue in any case under the one hundred and twentieth section of "The Common Law Procedure Act, 1852," unless the judge who tried the cause, or some other judge, or the Court, shall order execution to issue at any earlier or later period, with or without terms.

Execution may issue after trial out of term.

220. When any person is convicted and adjudged to pay a pecuniary penalty for any offence against the Customs Acts, and such person shall be committed in default of payment of penalty and costs, the amount of costs awarded to be paid by such person, as well as the penalty so adjudged, shall be stated in the conviction and also in the commitment.

Penalty and costs to be stated in convictions, &c.

221. Whenever the Commissioners or the proper officer of Customs shall proceed by information against any person for any offence under the Customs Acts before any justice, instead of proceeding in the Exchequer Division of the High Court of Justice, where a *capias* might be issued for arresting and holding the offender to bail, such justice may, on sufficient information on oath that the offence has been committed, issue his warrant to bring such offender before him or any other justice, and on his being so brought to require him to give security in such amount as he may deem sufficient to appear before him or any other justice at a time and place appointed for the hearing of the case, and in default of such security to commit such offender to gaol, or to the custody of the police or other constabulary force.

Where proceeding by *capias* is waived in favour of the subject, justices may issue warrant and admit to bail.

222. When by the Customs Acts a penalty jointly and severally shall have been incurred by any number of persons, such persons may be proceeded against jointly by one information, or severally by separate informations, as Her Majesty's Attorney-General for England or Ireland, and as the Lord Advocate of Scotland, or the Commissioners of Customs respectively may deem expedient; and in case of a proceeding against such several persons by joint information for recovery of the penalty or penalties so severally incurred by each, the penalty or penalties shall be recoverable against each, notwithstanding that any one or other of such persons so jointly proceeded against may have allowed judgment to go by confession or default, or that the penalty adjudged to be paid by any one or other of the defendants so jointly sued may be for a different amount from that of the penalty in which any one or other of such several persons may be convicted, or that any one or other of such several persons so jointly prosecuted may be acquitted; and no judgment on any such information shall be reversed or avoided, or error in law alleged therein, on the ground of any such judgment being obtained by confession or default of any of the persons, nor on account of any difference in the amount of the penalty or penalties in which any one or more of such persons may be convicted, or the acquittal of any such persons; but every such judgment shall be valid and effectual against any or all of the said several persons so jointly proceeded against, and for the full amount of the penalty or penalties in which such person or persons shall have been severally or respectively convicted.

Penalties joint and several may be sued for by joint and several information.

223. All informations exhibited before any justice for any offence committed against or forfeiture incurred under this or any other Act relating to the Customs, and all summonses, convictions and condemnations for such offences and forfeitures, and all warrants of any justice founded upon such convictions,

Informations, convictions, &c. to be in form, &c. in Schedule C.

may be in the form or to the effect in Schedule C. to this Act; and the form of information given in the said schedule, and the counts therein contained with reference to any offences created by or punishable under the several sections of this Act to which the same or any of them relate, shall be applicable to and sufficient for all purposes in the prosecution of such offences and forfeitures; and where two or more counts are given upon the same section those counts may be used which apply most nearly to the circumstances of the case; and any one or more of the said counts may be included in the same information, together with any other count or counts; and any one or more of the words or paragraphs descriptive of offences charged in any one or more of the counts in the same form of information, separated from the others by the word *or* in italics, may be used exclusively of the others, in conjunction with any other part of such form, and in any case, or for any offence or forfeiture for which no count is given in the said schedule, such count or counts may be substituted or added as circumstances may require; and every such information and every conviction and warrant of commitment or condemnation for such offence or forfeiture shall be deemed valid and sufficient in which the offence or forfeiture is set forth either in the words of the Act or Acts by which the penalty for such offence has been inflicted or under which any forfeiture has been incurred, or in the words of the information by this Act prescribed; and where in any such forms the word "Customs" is used to describe the Commissioners or officers of Customs, the words "Inland Revenue" or "Excise" may be substituted, as the case may require, and the like counts shall be applicable to and sufficient for the like purposes, and be used in like manner in any information filed in any Court having jurisdiction in such cases under this or any Act relating to the Customs; and no conviction, warrant of commitment, or condemnation shall be held void by reason of any defect therein; and no party shall be entitled to be discharged out of custody on account of such defect, provided it be alleged in such warrant that the said party has been convicted of such offence, and that it shall appear to the Court or judge before whom such warrant is returned that such conviction proceeded upon good and valid grounds; and every such warrant may be executed by any officer of Customs, and in any part of the United Kingdom, without further endorsement or sanction than that of the justice issuing the same; and no objection shall be taken or allowed to any information, complaint, or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

Justices may
summon
offender.

224. Upon the exhibiting of any information before any justice against any person for any offence against the Customs Acts for which offence the party charged is not liable to be detained, or being liable shall not be detained, or by which any penalty or forfeiture shall be sought to be recovered, or any punishment of hard labour sought to be inflicted, within three years next after the commission of the offence, such justice may from time to time and at any time afterwards issue his summons directed to such party, stating shortly the matter of such information, and requiring him personally to appear at a certain time or place before him or any other justice to answer to the said information, and to be further dealt with according to law.

On atten-
dance of the
party on the

225. If on the day and at the place appointed in such summons the party so summoned shall appear before such justice, then such justice shall proceed to

hear and determine the matter of such information, and on proof thereof, either upon the confession of the party or upon the oath of one or more credible witness or witnesses, shall convict the party charged in such information, but if the party so summoned shall fail so to appear, then if it be proved upon oath or affirmation to the justice then present that such summons was duly served at a reasonable time before the day appointed for his appearance, such justice may proceed *ex parte* to hear such information and adjudicate thereon as if such party had personally appeared before him in obedience to such summons.

day and place appointed, justices may hear and determine the case. On non-appearance, justice to proceed as if he had appeared. Justices may condemn goods liable to forfeiture.

226. When any information shall have been exhibited before any justice for the forfeiture of any goods seized under the Customs Acts, such justice is hereby required to summon the owner of such goods or the person from whom they were seized to appear before him or any other justice, and upon his or her appearance or default to appear, due service of such summons being proved, such justice may proceed to the examination of the matter, and on proof that the goods are liable to forfeiture under the Customs Acts may condemn the same.

227. Every summons issued by a justice of the peace under the Customs Acts, either to bring any person before him to answer any information or complaint, or any person to appear before him to testify what he may know concerning the matter of such information, wherever in the United Kingdom such person may be or reside, shall be deemed to be sufficiently served by any officer of Customs or other duly authorized person delivering the same to the party summoned personally, or by leaving the same at his last known place of abode or business in the United Kingdom, or on board any ship or vessel to which he may belong or may have lately belonged.

Summons to be served personally, or by leaving same at last known place of abode.

228. If any person so summoned to testify as aforesaid shall refuse or neglect to appear at the time and place appointed in such summons by the justice issuing the same, and no just excuse shall be offered for such neglect or refusal, then, after due proof of the service of such summons, or if such person having appeared in obedience to such summons shall refuse to take oath, or, if a person having legal power to make affirmation, refuse to affirm, or shall refuse to give evidence or answer to the best of his knowledge and belief any legal question required of him, he shall for every such default or offence forfeit such sum not exceeding twenty pounds as the justice shall see fit.

Penalty for neglecting to attend.

229. Where any offence shall be committed in any place upon the water not being within any county of the United Kingdom, or where the officers have any doubt whether such place is within the boundaries or limits of any such county, such offence shall for the purposes of the Customs Acts be deemed and taken to be an offence committed on the high seas; and for the purpose of giving jurisdiction under such Acts every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place on land where the offender or person complained against may be or be brought.

Offences on the water, &c., and jurisdiction.

230. When the attendance of any justice having jurisdiction in the county where the offence is committed cannot be conveniently obtained, any magistrate of any neighbouring or adjoining county to that in which the offence was deemed to have been committed may hear and determine any information exhibited before him, and he shall for that purpose have the same powers and authorities as a justice for the county in which the offence was or was deemed to have been committed.

Justice of adjoining county may act when required.

Justices of counties to have concurrent jurisdiction in cities, boroughs, &c. situate in such counties.

231. Where any offence against the Customs Acts shall be committed in any city, borough, liberty, division, franchise, or town corporate, any justice having jurisdiction therein, and any justice of any county within which the same is or are situated, shall have jurisdiction to hear and determine the same; and all powers vested in any justice of the peace by virtue of this Act shall be and the same are hereby vested in and may be exercised in the Isle of Man or the Channel Islands by any governor, deputy governor, bailiff, chief magistrate, deemster, jurat, or other magistrate of the said isle or islands; and for the purposes of the Customs Acts the jurisdiction of the magistrates of the borough of Gravesend in the county of Kent shall be deemed to extend on the River Thames from Yantlet Creek to Broadness Point in the Northfleet Hope, and shall include every part of the said river between those limits respectively.

Justice may commit in default of payment of penalty until paid.
Small Penalties Act, 1865, not applicable to Customs.

232. If any penalty incurred for any offence under the Customs Acts be not paid on conviction, the convicting justice shall forthwith commit the offender to any of Her Majesty's gaols within his jurisdiction, there to remain for such term as is herein-after provided, or until the penalty shall be paid; and "The Small Penalties Act, 1865," shall not apply to any penalty imposed by the Customs Acts; and where such party is convicted of any offence for which the punishment of hard labour is inflicted, such justice shall commit such party to any gaol or house of correction, there to be kept to hard labour for such time as may be authorized by the Customs Acts.

Justices may commit in certain cases without order of Commissioners.

When quantity of spirits is less than 5 gallons, or of tobacco less than 20 lbs.

Where quantity between 5 and 20 gallons spirits, or from 20 to 80 lbs. tobacco, justices may mitigate.

Above 20 gallons spirits, or 80 lbs. tobacco, no mitigation by justices.

233. When any person shall be brought before a justice for any offence against the Customs Acts for which a pecuniary penalty is thereby imposed, if the goods in respect of which he shall have been so brought shall not consist of spirits or tobacco, or being spirits or tobacco shall not exceed five gallons of spirits or twenty pounds weight of tobacco, such justice may proceed summarily upon the case without information or direction of the Commissioners of Customs, and if such person shall be convicted, such justice may adjudge that he shall, in lieu of any other penalty, forfeit a sum not less than the single nor more than the treble value of such goods, including the duty of importation thereof, and in default of payment commit such person to any of Her Majesty's gaols for any period not less than fourteen days, nor more than one month; and if such spirits or tobacco shall exceed five gallons but not exceed twenty gallons of spirits, or shall exceed twenty pounds weight of tobacco but not exceed eighty pounds weight, such person shall forfeit a sum equal to treble the duty-paid value of such spirits or tobacco, or one hundred pounds, at the election of the Commissioners of Customs, and if proceeded against for the latter and convicted, such justice may mitigate the penalty to any sum not less than one fourth, and in default of payment of the penalty or mitigated penalty so imposed may commit the offender to any of Her Majesty's gaols until the same be paid; and if such spirits shall exceed twenty gallons, or such tobacco shall exceed eighty pounds weight, such person shall forfeit a sum equal to treble the value of such spirits or tobacco, or one hundred pounds, at the election of the Commissioners of Customs, and shall upon conviction forthwith pay, without any mitigation, the penalty imposed, and in default thereof the said justice shall commit the person so convicted to any of Her Majesty's gaols, there to remain until such penalty shall be paid.

234. It shall be lawful for [the Local Government Board] from time to time, by her or their order, to require that no person on board any ship coming to any port in the United Kingdom, the Channel Islands, or the Isle of Man, from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper officer of Customs, at such place or places as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer, *whether or not it shall on or after such examination be found expedient to order such vessel under the restraint of quarantine*, and any person so quitting any such vessel shall forfeit a sum not exceeding one hundred pounds; and if the master, pilot, or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order, until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties or either of them if incurred, *and any penalty incurred under the Act of the sixth year of the reign of King George the Fourth, chapter seventy-eight*, shall be subject to reduction to any sum not exceeding one hundred pounds, and may be recovered by information and summons before a stipendiary magistrate, or any two justices of the peace, who are hereby authorized to reduce the same accordingly, and to commit the offender to prison in default of payment of any penalty so imposed for any period not exceeding six months.

Persons arriving in ships from infected places not to land before examination.

The Local Government Board was substituted for the Queen in Council by sect. 2, and the words in italics were repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22), and the Public Health Act, 1896 (59 & 60 Vict. c. 19), s. 6 and Schedule.

235. All penalties and forfeitures recovered, and all sums, including justices clerks fees, awarded to be paid as costs to or for Her Majesty under this or any other Act relating to the Customs, shall be paid to the Commissioners of Customs, and all penalties, forfeitures, and costs recovered under any Act relating to the Excise shall be paid to the Commissioners of Inland Revenue, or to the persons appointed by such Commissioners respectively to receive the same, and such penalties, forfeitures, and costs shall be applied by such Commissioners respectively in such manner as the law directs.

Penalties and forfeitures to be paid to Commissioners.

236. Where any person shall have been committed to prison by any justice for non-payment of any penalty incurred under the Customs Acts less than one hundred pounds, the gaoler or keeper of such prison is hereby authorized and required to discharge such person at the end of six months from the date of his imprisonment on such committal.

Any person committed in default of payment of a penalty less than 100l. to be discharged by gaoler in six months if not duly released.

237. When any verdict shall pass or conviction be had against any person for any offence against the Customs Acts and he shall have been adjudged to pay a penalty of one hundred pounds or upwards, the presiding justice may, if for a first offence, commit the offender to one of Her Majesty's prisons for not less than six nor more than nine months, and if for a subsequent offence may order that the offender shall, in lieu of payment of the penalty, be imprisoned, with or without hard labour, for a period not less than six nor more than twelve months.

Persons previously convicted may, on verdict, be imprisoned with or without hard labour.

This section was substituted for sect. 237 by the Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21), s. 14 and Schedule.

Justices may commit to nearest house of correction, if none in their jurisdiction.

238. When any person shall have been convicted of any offence against the Customs Acts for which such person is liable to be sentenced to hard labour before any justice within whose jurisdiction there is no house of correction, such justice shall and may, by warrant under his hand and seal, commit such offender to the gaol or house of correction nearest to the place where such offender is convicted; and the governor or keeper of such gaol or house of correction is hereby required to receive such offender and to obey such warrant in all respects as if such gaol or house of correction was within the jurisdiction of such justice.

Justices may commute hard labour where offender is a female or infirm.

239. Where any person shall have been convicted of any offence against the Customs Acts for which such person would be liable to be committed to hard labour, the justice before whom such person is so convicted may, if such person be a female or if a male from physical infirmity incapable of hard labour, order and adjudge that such person shall be imprisoned in any gaol within their jurisdiction without hard labour, stating the cause of mitigation in the warrant of commitment.

If prisoner be found to have been previously convicted, imprisonment may be extended.

240. When any person shall have been convicted before any justice of any offence against the Customs Acts for which such person is liable to be committed to hard labour, and it shall at any time during the imprisonment of such person be made to appear to the said or any other justice that such person had before been convicted of a similar offence, it shall be lawful for either of such justices, and he is hereby required, to commit such offender to some house of correction to be kept to hard labour for not less than nine nor more than twelve months in the whole from the date of the first commitment, and to amend the warrant of commitment accordingly, and without including in such amendment any reference to the former conviction; and any gaoler in whose custody such person shall be is hereby required, upon a written order signed by any justice, to produce such person before such last-mentioned or any other justice having jurisdiction therein; and any married woman convicted of any offence against the Customs Acts may, in default of payment of any penalty incurred by her, be committed to prison.

Married women may be committed.

Subsistence of prisoners committed for offences against Customs Laws.

241. The Commissioners of Customs may allow, and to such amount as they shall direct, any expenses incurred by any county, city, borough, liberty, division, franchise, or town corporate, for the subsistence of any person committed to hard labour in any prison in the United Kingdom under the Customs Acts, and may allow for the necessary subsistence of poor persons committed under the Customs Acts for non-payment of a pecuniary penalty any sum not exceeding sevenpence halfpenny per diem.

Subsistence to prisoners, and gaol fees in Channel Islands.

242. The Commissioners of Customs may allow and pay for the necessary subsistence of any poor person confined in any prison in the Channel Islands for any offence under the Customs Acts such weekly or daily sum as by the regulations of the prison in which such poor person may be confined is required for the maintenance of poor insolvent debtors, and also such gaol fees as are properly payable in respect of any prisoner at the suit of the Crown for any such offence.

Removal of proceedings. Writs of certiorari and habeas

As to the removal of proceedings before justices under the Customs Laws.

243. No writ of certiorari shall issue to remove any proceedings before any justice under the Customs Acts, nor shall any writ of habeas corpus or judge's order issue to bring up the body of any person who shall have been convicted

before any justice under the Customs Acts, unless the party against whom such proceedings shall have been directed or who shall have been so convicted, or his attorney or agent, shall state by affidavit in writing duly sworn the grounds of objection to such proceedings or conviction; and upon the return to such writ of certiorari or habeas corpus or judge's order no objection shall be entertained by the Court other than such as shall have been stated in such affidavit; and any justice shall and may amend any information, conviction, or warrant of commitment for any offence under such Acts at any time, whether before or after conviction.

corpus not to issue except on affidavit.

244. No such writ or order shall issue without notice in writing to the Solicitor for the Customs, and no return to any such writ or order shall be considered by the High Court of Justice in England, or by any of Her Majesty's Courts at Dublin or Edinburgh, or the judges thereof, unless there shall be produced to such Court or judge an affidavit in writing duly sworn stating that notice of the issuing of such writ or order was given to the Solicitor of Customs or left at his office four clear days before the return of such writ or order; and with respect to all such writs or orders there shall be an interval of four clear days at least between the day of issue and the day of the return thereof, and any such writ or order issuing without notice, or not in conformity with the directions herein contained, shall be void to all intents and purposes.

No writ of habeas corpus or order without notice to solicitor.

245. Where any person against whom an information shall be exhibited before a justice of the peace under the Customs Acts shall be in prison on any account whatever at the time appointed for the hearing of such information, the Commissioners of Customs shall cause to be obtained and issued out of the *Exchequer Division of the High Court of Justice in England*, or out of the Court of Exchequer in Scotland or Ireland, as the case may require, a writ of habeas corpus or a judge's order directed to the governor or keeper of the prison in which such person shall be confined, commanding him to convey such person to the place of hearing to be specified in such writ or order, in order that the said person may answer the said information and attend the trial thereof; and such writ of habeas corpus or judge's order shall be issued out of either of the said Courts, on application made by the Solicitor for the Customs on behalf of the said Commissioners, to any judge of the High Court of Justice in England, or to any baron or judge of any of the Superior Courts of law in Scotland and Ireland respectively; and it shall be lawful for the justice or magistrate before whom any such information shall be brought for adjudication to refuse to proceed with the said information in the absence of the person charged, when satisfactory proof shall be made that such person is confined in prison.

Prisoners against whom informations are exhibited to be brought up by habeas corpus or judge's order.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

As to justices clerks fees in Customs prosecutions.

246. The fees payable to justices clerks in respect of prosecutions under the Customs Acts shall be in accordance with the Table of Fees to this Act annexed.

Justices clerks fees.

As to proceedings in superior Courts for penalties.

247. All suits, prosecutions or informations for recovery of penalties under the Customs Acts in the High Court of Justice in England or in any of Her Majesty's Courts of Record at Dublin or Edinburgh may be commenced either by writ of subpœna or capias as the first process at the election of the Com-

Superior Courts.
Procedure for penalties.

missioners of Customs, in which shall be specified the amount of the penalty or penalties sued for, and, if by *capias*, the person against whom such *capias* shall issue shall be bound with two sufficient sureties to the party to whom such *capias* shall be directed to appear in the Court out of which such *capias* shall issue at the day of the return of such writ to answer such information, and shall likewise at the time of such appearing to be bound to Her Majesty, *her heirs and successors*, with two sufficient sureties, or, by leave of the Court or a judge, more than two, to be acknowledged in the same Court, to answer and pay all the penalties so sued for, or such other sum, not exceeding the penalty or penalties sought to be recovered, as the Commissioners of Customs, or the judge upon whose fiat such *capias* shall issue, may see fit, in case such person shall be convicted thereof, or to yield the body of such person to prison, and in default of being bound by such respective sureties the person against whom such *capias* shall issue shall be taken to prison.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Service of
subpoena.

248. If in any case the Commissioners of Customs waive the right of issuing writ of *capias*, and elect to proceed by subpoena, service of a copy of such subpoena, either on the defendant personally or by leaving the same at his last known place of abode or business anywhere in the United Kingdom or on board any ship or vessel to which such defendant may belong or have lately belonged, shall be deemed to be sufficiently served.

Judgment by
default for
non-appear-
ance or want
of plea.

249. Any person arrested under such *capias* and imprisoned for want of sufficient bail shall be served with a copy of the information filed against him either personally or by delivery of a true copy thereof to the gaoler, keeper or turnkey of the prison in which such person shall have been confined; and in default of such person's appearing to such process and pleading to such information for the space of twenty days, to be computed from the date of such service, judgment shall be entered by default; *and in case judgment shall be obtained against any such person by default, verdict or otherwise, and such person shall not pay the sum recovered against him, execution shall thereupon issue, not only against the body of the person so imprisoned as aforesaid, but against all the real and personal estate of such person, or any other person in trust for him, for such sum or sums of money so as aforesaid recovered against him, together with the costs, poundage, fees, and expenses of execution over and above the sum recovered.*

The words in italics were repealed by the Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 19 and Schedule. Their place is taken by sect. 4 of that Act, which is as follows:—

Execution on
judgment in
Superior
Court.

4. If in any suit, prosecution or information for the recovery of penalties under the Customs Acts in the High Court of Justice in England, the High Court of Justice in Ireland, or the Court of Session as Court of Exchequer or the High Court of Justiciary in Scotland, judgment or decree shall be obtained against any person by default or in absence or *in foro* or by verdict or otherwise, and such person shall not pay the sum or sums of money for which such judgment shall have been entered up or discerned (*sic*) for under such decree, execution shall thereupon issue, and diligence shall proceed not only against his body but against all his real and personal property, whether vested in himself or in any other person in trust for him, for such sum or sums of money as aforesaid, together with the costs, poundage, fees and expenses of execution; and any person whose body shall be taken in execution as aforesaid shall be treated in the same manner in all respects as a person committed to prison by any justice for non-payment of a penalty incurred for an offence against the Customs Acts.

Execution
may issue to
sheriff of
any county

250. Every such execution may be directed in the first instance to the sheriff of any county or county of a city or other shrievalty as the party suing out the same may think fit, without reference to the county in which the

venue is laid, and without any suggestion of the issuing of any prior writ of execution into such county.

251. Where any person so arrested and imprisoned as aforesaid by virtue of any writ of *capias* shall be disabled by poverty from making defence to any such information, it shall be competent for such person to petition the Court on affidavit verifying such disability; and the Court, on being satisfied of the truth of the facts alleged in such affidavit, may assign counsel and attorney to such person, and the counsel and attorney so assigned are hereby required to act for such person without fee.

252. Every sheriff, mayor, bailiff, and other person accustomed to execute the process of the Courts, and every under-sheriff, deputy, or agent of such sheriff, mayor, or bailiff, is hereby required (on the request of the Solicitor of Customs, or of any person acting on his behalf, such request to be endorsed on the back of any writ of *capias* or other process issuing as aforesaid, and signed by such solicitor or by such other person stating his authority,) to grant a special warrant to such persons as shall be named to them by such solicitor or other person for apprehending the person against whom such process shall issue, or in default thereof every such sheriff, mayor, bailiff, under-bailiff, and other person shall be liable to such process of contempt, fines, and penalties as they or any of them are now by any law or custom liable to in case of refusing to execute similar process where the defendant might have been taken thereupon in the usual course of proceeding.

253. Every sheriff, mayor, bailiff, under-sheriff, and other person granting such special warrant shall be indemnified from all liability for the escape of any person who shall be arrested by virtue of such warrant; but when any person so arrested shall be tendered to the gaoler or keeper of the proper prison, he is hereby required to receive every person so arrested and tendered as aforesaid, and give a receipt for his body.

Compare *Brasyer v. Maclean* (1875), L. R. 6 P. C. 398; 44 L. J. P. C. 79.

254. If when any person is arrested by writ of *capias ad respondendum*, the sheriff or other officer shall take bail from such person, such sheriff or other officer, at the request and costs of the Solicitor of Customs or other proper officer, shall assign to Her Majesty, *her heirs and successors*, the bail bond taken from such person, by endorsing and attesting the same under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so endorsed be duly stamped before any suit be commenced thereupon, and if such bail bond be forfeited, such process shall thereupon issue as on bonds originally made to Her Majesty, *her heirs and successors*.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

As to prosecution by indictment or information.

255. All indictments or suits for any offences or the recovery of any penalties or forfeitures under the Customs Acts shall, except in the cases where summary jurisdiction is given to justices, be preferred or commenced in the name of Her Majesty's Attorney-General for England or Ireland, or of the Lord Advocate of Scotland, or of some officer of Customs or Inland Revenue.

256. In any prosecution for recovery of any fine, penalty, or forfeiture incurred under the Customs Acts, Her Majesty's Attorney-General for England,

without reference to venue.

Impoverished persons may sue in forma pauperis.

Sheriff to grant special warrant on writ of *capias* endorsed by Solicitor of Customs.

Sheriff indemnified for escape if warrant granted at request of Customs.

Gaoler to receive offender.

When offenders arrested give bail to the sheriff, bail bond to be assigned to Her Majesty.

Prosecutions, &c.

In whose names indictments or suits to be preferred.

The Attorney-General or Lord Advo-

cate may enter a nolle prosequi.

Her Majesty's Attorney-General for Ireland, or the Lord Advocate of Scotland, if satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it may be inexpedient to proceed in the said prosecution, may enter a nolle prosequi or otherwise on such information.

Suits, &c. to be exhibited within three years.

257. All suits, indictments, or informations brought or exhibited for any offence against the Customs Acts in any Court or before any justice, shall be brought or exhibited within three years next after the date of the offence committed.

Indictments or informations may be tried in any county in England, Scotland, or Ireland respectively.

258. Any indictment, prosecution, or information which may be instituted or brought under the direction of the Commissioners of Customs for offences against the Customs Acts shall and may be inquired of, examined, tried, and determined in any county of England when the offence is committed in England, and in any county of Scotland when the offence is committed in Scotland, and in any county in Ireland when the offence is committed in Ireland, in such manner and form as if the offence had been committed in the said county, where the said indictment or information shall be tried.

Proofs in proceedings.
Defendant's proof in smuggling cases.

As to proofs in proceedings.

259. If in any prosecution in respect of any goods seized for nonpayment of duties, or any other cause of forfeiture, or for the recovering any penalty or penalties under the Customs Acts, any dispute shall arise whether the duties of Customs have been paid in respect of such goods, or whether the same have been lawfully imported or lawfully unshipped, or concerning the place from whence such goods were brought, then and in every such case the proof thereof shall be on the defendant in such prosecution, and where any such proceedings are had in the *Exchequer Division of the High Court of Justice* on the Revenue side, the defendant shall be competent and compellable to give evidence.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Averments in smuggling cases.

260. The averment that the Commissioners of Customs or Inland Revenue have directed or elected that any information or proceedings under the Customs Acts shall be instituted, or that any ship or boat is foreign or belonging wholly or in part to Her Majesty's subjects, or that any person detained or found on board any ship or boat liable to seizure is or is not a subject of Her Majesty, or that any goods thrown overboard, staved, or destroyed were so thrown overboard, staved, or destroyed to prevent seizure, or that any goods thrown overboard, staved, or destroyed during chase by any ship or boat in Her Majesty's service, or in the service of the Revenue, were so thrown overboard, staved, or destroyed to avoid seizure, or that any person is an officer of Customs or Excise, or that any person was employed for the prevention of smuggling, or that the offence was committed within the limits of any port, or where the offence is committed in any port of the United Kingdom, the naming of such port in any information or proceedings shall be deemed to be sufficient, unless the defendant in any such case shall prove to the contrary.

Vivâ voce evidence may be given that a party is an officer.

Witness competent although entitled to

261. If upon any trial a question shall arise whether any person is an officer of the army, navy, marines or coastguard duly employed for the prevention of smuggling, or an officer of Customs or Excise, his own evidence thereof, or other evidence of his having acted as such, shall be deemed sufficient, without production of his commission or deputation; and every such officer and any person acting in his aid or assistance shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as

aforsaid, notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty, or to any reward upon the conviction of the party charged in such suit or information. part of seizure or reward.

262. Upon the trial of any issue, or upon any judicial hearing or investigation touching any seizure, penalty or forfeiture, or other proceeding under the Customs Acts or any Act relating to the Excise, or incident thereto, where it may be necessary to give proof of any order issued by the *Commissioners of the Treasury*, or by the Commissioners of Customs or Inland Revenue respectively, the order, or any letter or instructions referring thereto, which shall have been officially received by any officer of Customs or Excise for his government, and under which he shall have acted as such officer, shall be admitted and taken as sufficient evidence and proof of such order. What shall be evidence of order of Treasury or Commissioners of Customs or Inland Revenue.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

263. Condemnation by any justice under the Customs Laws may be proved in any Court of justice, or before any competent tribunal, by the production of a certificate of such condemnation purporting to be signed by such justice, or an examined copy of the record of such condemnation certified by the clerk to such justice. Evidence of condemnation in forfeiture.

As to claim by owners of goods seized.

264. No claim or appearance shall be entered to any information filed or exhibited for the forfeiture of any ship or goods seized for any cause of forfeiture in any Court or before any justice, unless such claim or appearance be made by or in the real name of the owner or proprietor thereof, describing his place of residence and occupation; and if such claimant shall reside at London, Edinburgh or Dublin, or within the liberties thereof, oath shall be made by him before one of the judges of the Court in which such information is filed, or before any justice before whom such information shall be exhibited, that the said ship or goods were his property at the time of seizure; but if such person shall reside elsewhere, then oath shall be made by the attorney by whom such claim or appearance shall be entered that he has full authority for such claimant to make or enter the same, and that to the best of his knowledge and belief the same were at the time of seizure the *bonâ fide* property of the claimant; and on failure of making such proof of ownership such ship or goods shall be condemned, as if no claim or appearance had been made.

Entry of appearances.
Claim to be in name of *bonâ fide* owners.
Verified by oath of ownership.

265. When any such ship, goods, or other things shall at the time of the seizure thereof be the *bonâ fide* property of any number of proprietors exceeding five, it shall not be necessary for more than two of them to enter such claim or appearance on the part of themselves and their co-proprietors, or to make such oath as aforesaid. If goods owned by more than five co-proprietors, two may make the oath.

266. If any ship, goods, or other things shall at the time of seizure be the property of a joint stock company, or of co-partners carrying on trade in the United Kingdom, such claim and appearance may be entered and oath made by the public officer of such company, or by an agent for such co-partners or by one of them, and every person who shall be convicted of taking a false oath as to the facts hereinbefore required to be sworn to shall be guilty of perjury, and liable to the penalties thereof. If goods owned by a company or co-partners, oath may be made by public officer or agent.

267. When in any information or suit relating to any seizure a verdict or judgment shall be found for the claimant, if it shall appear to the judge or justice before whom the same was heard that there was reasonable or probable Probable cause may be certified in bar.

cause of seizure, and such judge or justice shall so certify on the record or information, such certificate may be pleaded a bar to any action, indictment, or other proceeding against the seizer; and in case any action, indictment, or other proceeding shall be brought to trial against any person on account of any seizure (whether any information be brought to trial for the condemnation of the same or not), and a verdict shall be given for the plaintiff, if the judge or justice before whom such action, indictment, information, or other proceeding shall be tried or heard shall certify on the record, information, or other written proceedings that there was reasonable or probable cause for seizure, the plaintiff shall not be entitled to more than twopence damages nor to any costs, nor shall the defendant be fined more than one shilling; and the production of such certificate, or a copy thereof, verified by the signature of the officer of the Court, shall be sufficient evidence of such certificate.

268—272. [*These sections, relating to actions against Customs officers, were repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 2 and Schedule, and replaced by sect. 1 of that Act.*]

Solicitors
clerks and
officers of
Customs may
conduct
cases.

273. Any person appointed to be solicitor or assistant solicitor of Her Majesty's Customs, or any clerk duly appointed to act on his behalf or under his or their directions, shall and may in any case relating to the Customs, or under the direction of the Commissioners of Her Majesty's Treasury or Customs, act as counsel, solicitor, *attorney-at-law*, advocate, or writer to the signet in the prosecution, conduct, or defence of any such case in any Court, jurisdiction, or place in which such case may be instituted, and any such solicitor, assistant solicitor, or clerk, and any officer of Customs, under the order and directions of the Commissioners of Customs, may prosecute, defend, or conduct any proceeding before any justice in any matter relating to the Customs to be heard or determined by him.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Defendants
in Customs
cases to have
choice of
attorney and
counsel in
Scotland.

274. Any writer to the signet, solicitor before the Supreme Courts in Scotland, or solicitor at law duly licensed to practise as an agent in the Courts of Session and Justiciary in Scotland, who shall be retained by any defendant at the suit of the Crown for any offence against the laws relating to the Customs, shall be competent to undertake the defence of such defendant, and to instruct counsel for that purpose; and any such defendant who may not have retained any such agent shall be entitled to be heard by his counsel on any trial for such offence, although such defendant may have previously appeared to answer such suit in person instead of appearing by agent.

* * * * *

MISCELLANEOUS MATTERS.

As to the interpretation of terms used in this Act.

Interpreta-
tion of terms.

284. For the purposes of this or any other Act relating to the Customs and in construing the same, the following terms, when not inconsistent with the context or subject matter, shall have the several meanings, and include the several matters and things hereinafter prescribed and assigned to them; that is to say,

“Attorney-General” shall include Solicitor-General, Attorney-General in the Isle of Man, Procureur, or other chief law officer of the Crown in any of Her Majesty's possessions abroad where there is no Attorney-General.

“British possession” shall mean and include colony, plantation, island, territory, or settlement belonging to Her Majesty.

"Channel Islands" shall mean the islands of Guernsey, Jersey, Alderney, and Sark, and their respective dependencies.

"Commissioners of the Treasury" shall mean the Lords Commissioners of Her Majesty's Treasury.

"County" shall mean and include any city, county of a city, county of a town, borough, or other magisterial jurisdiction where such construction is not inconsistent with the context.

"Customs Acts" shall mean and include this and all or any other Acts or Act relating to the Customs.

"Exporter of goods for which no bond is required" shall include and apply to the person subscribing the declaration required at the foot of the specification, Forms No. 8 and No. 9, or manifest in lieu thereof, as the case may be.

"Drawback" shall include bounty.

"Gaoler" shall mean and include any governor or keeper of Her Majesty's prisons.

"Her Majesty" shall mean Her Majesty, her heirs and successors.

"Importer" shall mean, include, and apply to any owner or other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers of Customs.

"Justice" shall mean and include justice of the peace, County Court judge, recorder, sheriff depute, governor, deputy-governor, lieutenant-governor, bailiff, chief magistrate, deemster, jurat, and any other magistrate in the United Kingdom and the Channel Islands.

"Master" shall mean the person having or taking the charge or command of any ship.

"Official import lists and official export lists" shall mean any lists which are now or shall from time to time be issued under the authority of the Commissioners of the Treasury or Customs, prescribing the denominations, descriptions, and quantity by tale, weight, measure, value, or otherwise, by which articles of merchandise shall be required to be entered on their importation into or exportation from the United Kingdom.

"Proper officer of Inland Revenue" in the fourth section of the Act of the thirty-seventh and thirty-eighth years of Her Majesty's reign [chapter forty-six] shall mean "proper officer of Customs."

"Queen's warehouse" shall mean any place provided by the Crown or approved by the Commissioners of Customs for the deposit of goods for security thereof and of the duties due thereon.

"Warehouse" shall mean any place in which goods entered to be warehoused may be lodged, kept, and secured.

Words in italics repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

* * * * *

SCHEDULE (C.) referred to in the foregoing Act.

FORM OF INFORMATION.

Be it remembered, that A. B., an officer of Customs, under the direction of the Commissioners of Customs, informs me, one of Her Majesty's justices of the peace in and for the of .

COUNT I.

That C. D., to wit, on the day of 18 , did import, or bring, or unship, or deliver, or carry, or remove, or harbour, or deal with, or was con-

THE CUSTOMS CONSOLIDATION ACT, 1876.

cerned in importing, or unshipping, or delivering, or carrying, or removing, or harbouring, or dealing with to evade the payment of the duties due thereon, or to evade the prohibition or restriction relating to the importation and delivery of, certain uncustomed, or prohibited, or restricted goods, to wit [*describe them*].

COUNT II.

That C. D., to wit, on the day of 18 , was found, or discovered to have been, on board a ship, or boat, within three leagues of the United Kingdom, or the Channel Islands.

COUNT III.

That C. D., to wit, on the day of 18 , was found, or discovered to have been, on board a ship, or boat, within a port, or bay, or harbour, or river, or creek of the United Kingdom, or "the Channel Islands" [*as the case may be*].

COUNT IV.

That C. D., to wit, on the day of 18 , was found, or discovered to have been, on board a ship, or boat, part of the cargo of which was thrown overboard, or staved, or destroyed, to prevent seizure.

COUNT V.

That C. D., to wit, on the day of 18 , was found on board, or discovered to have been on board, the ship , being one of Her Majesty's ships, or in Her Majesty's employment, or service, or the ship being a foreign post office packet employed in carrying mails between a foreign country and the United Kingdom [*as the case may be*].

COUNT VI.

That C. D. did, to wit, on the day of 18 , make and subscribe a false declaration, or document, purporting to be [*here state the nature of the document generally*], the same being false and untrue.

COUNT VII.

That C. D. did, to wit, on the day of 18 , counterfeit, or falsify or wilfully use when counterfeited or falsified [*as the case may be*], a certain document purporting to be [*here state the nature of the document generally*].

COUNT VIII.

That C. D. did, to wit, on the day of 18 , alter a certain document, or instrument, after the same had been officially issued, to wit [*here state the nature of the document generally*].

COUNT IX.

That C. D. did, to wit, on the day of 18 , counterfeit the seal, or signature, or initials, or mark, of or used by, an officer of Customs for [*here state the purport*].

COUNT X.

That C. D. was, to wit, on the day of 18 , driving or conducting a cart, or waggon, or conveyance, and refused to stop, or to allow the examination thereof, when required in the Queen's name.

COUNT XI.

That C. D., on the day of 18 , did obstruct , being a person employed for the prevention of smuggling and in the execution of his duty, or was concerned in the rescue of, or in the endeavour to rescue, or in the destruction of, or in the endeavour to destroy, seized goods, or in the rescue of, or endeavour to rescue a person, to wit, one E. F., who had then been apprehended for an offence punishable by fine or imprisonment under the Customs Acts, or prevented or endeavoured to prevent, the apprehension of one E. F., who had been, to wit, on the day of 18 , guilty of an offence punishable by fine or imprisonment under the Customs Acts.

COUNT XII.

That C. D., to wit, on the day of 18 , denied the possession of certain foreign goods, to wit [*here mention generally the goods*], which were afterwards found to be, or to have been [*as the case may be*], in his possession.

COUNT XIII.

That C. D., a person required by the Customs Acts to answer questions put to him by an Officer of the Customs, to wit, on the day of 18 , did untruly answer, or did refuse to answer a certain question put to him by an officer of Customs.

COUNT XIV.

That C. D., being summoned as a witness, did neglect, or refused, to appear, or and having appeared in obedience to such summons, did refuse to take oath, or affirm, or give evidence, or answer,

contrary to section [*here insert in figures the section creating the offence*] of "The Customs Consolidation Act, 1876," whereby the said C. D. has forfeited the sum of , being treble the value of the goods or the penalty of one hundred pounds [*as the case may be*], for which the Commissioners of Customs have elected to sue, or the sum of pounds, or a sum not exceeding one hundred pounds, or a sum not exceeding pounds, or has become liable to be imprisoned [*here insert the penalty, or period of imprisonment, imposed by the section under which the offence is charged*].

For goods only.

That certain goods, to wit [*here mention generally the goods or things*], were seized on the day of 18 , for being dealt with contrary to section [*here insert the section in figures*] of "The Customs Consolidation Act, 1876," whereby the said goods have become liable to forfeiture, and that C. D., of , has claimed the same.

Exhibited to and before me,)
the day of , in)
the year of our Lord .)

THE CUSTOMS CONSOLIDATION ACT, 1876.

FORM OF SUMMONS ON INFORMATION.

To [C. D.]

to wit. } Whereas an information has been exhibited by [A. B.] an officer of
 before me } Customs, under the direction of the Commissioners of Customs,
 of , one of Her Majesty's justices of the peace for the
 of , in the following form [*here copy the information*].

This is therefore to require you personally to appear before me, or such other
 justice or justices of the peace as may be present, at , in the
 of , on the day of next ensuing, at the hour of o'clock
 in the forenoon of said day, to answer the said information.

Given under my hand and seal at in the of this day
 of in the year of our Lord

FORM OF SUMMONS ON INFORMATION FOR CONDEMNATION OF SEIZURES.

To of in the of .

to wit. } An information having been preferred by [A. B.] an officer of
 before me } Customs, under the direction of the Commissioners of Customs,
 for the condemnation of [*here state the goods*] seized on the day of in
 the year of our Lord , for being dealt with contrary to section of
 "The Customs Consolidation Act, 1876," and claimed by you.

This is to require you to appear before me, or such other justice or justices of
 the peace as may be present at , in the of on the day
 of next ensuing, at the hour of o'clock in the forenoon of said day,
 to show cause why the said goods should not be condemned as forfeited.

Given under my hand and seal at , in the of this day
 of in the year of our Lord

FORM OF SUMMONS FOR WITNESSES.

To

to wit. } You are hereby required personally to be and appear on the day
 of next ensuing, at the hour of o'clock in the
 forenoon, at in the of before me, or such other of Her Majesty's
 justices of the peace for the said of as may be then and there present,
 to give evidence and testify the truth, according to your knowledge, concerning
 the facts alleged in a certain information exhibited against C. D. under "The
 Customs Consolidation Act, 1876," and herein fail not, under the penalty
 therein provided.

Given under my hand and seal at in the of this day
 of in the year of our Lord

FORM OF CONVICTION.

to wit. } Be it remembered, that on this day of in the year of our
 Lord at in the of C. D. is convicted
 before me [*or us, as the case may be,*] of Her Majesty's justices of the
 peace for the of , for that he the said C. D., within three years now

last past [*here state the offence as in the information*], and [*where the party has been convicted of an offence punishable by pecuniary penalty and imprisonment in default of payment*], I, or we, adjudge the said C. D. for his said offence to forfeit and pay the sum of , which [*if such be the case*], I, or we, mitigate to the sum of ; and if the said sum of be not forthwith paid, I, or we, adjudge the said C. D. to be imprisoned in Her Majesty's gaol at in the of until the same be paid, [*or where it shall have been so adjudicated add, instead of the words "until the same be paid," for the period of months*], unless he shall sooner pay the said sum of or [*where the party has been convicted of an offence punishable by imprisonment with hard labour*], I, or we, adjudge the said C. D. for his said offence [*and where the party has been previously convicted insert here, "he having been previously convicted,"*] to be imprisoned in Her Majesty's house of correction at in the of , and there kept to hard labour for the period of months.

Given under hand and seal at in the of , this day of in the year of our Lord

FORM OF COMMITMENT FOR NON-PAYMENT OF A PECUNIARY PENALTY.

To [A. B.] an officer of Customs, and to the gaoler or keeper of the to wit. } gaol at in the of [C. D.] having been this day convicted before me [*or us, as the case may be*], of Her Majesty's justices of the peace in and for the of upon the information of [A. B.] an officer of Customs, under the direction of the Commissioners of Customs, of having, within three years now last past, [*here state the offence generally, and the date thereof*], I [*or we, as the case may be*], did adjudge that the said [C. D.] had forfeited for his said offence the sum of , [*adding, if mitigated*], which I [*or we, as the case may be*], mitigated to the sum of which has not been paid.

This is to command you forthwith to convey the said [C. D.] to the gaol at in the of , and to deliver him into the custody of the gaoler or keeper of the said gaol.

And I [*or we*] the said justice or justices [*as the case may be*] do hereby authorise and require you, the said gaoler or keeper of the said gaol, to receive the said [C. D.] into your custody, and him safely to keep in your said gaol until he shall duly pay the said sum of or be discharged according to law [*or, if it be so adjudicated, insert, instead of what follows the word "gaol," for the period of months, unless he shall sooner pay the said sum of*].

Given under hand and seal at in the of , this day of in the year of our Lord

FORM OF COMMITMENT TO HARD LABOUR.

To [A. B.] an officer of Customs, and to the gaoler or keeper of to wit. } the house of correction at in the of C. D. having been this day duly convicted before me [*or us, as the case may be*], of Her Majesty's justices of the peace for the of upon the information of [A. B.] an officer of Customs, under the direction of the Commissioners of Customs, of having, within three years now last past, [*here state the offence generally and date thereof*], I [*or we, as the case may be*], did adjudge that

THE CUSTOMS CONSOLIDATION ACT, 1876.

the said [C. D.] should for his said offence [*if previously convicted, say, "he having been previously convicted,"*] be imprisoned in the house of correction at in the said of , and be there kept to hard labour for the period of months.

This is to command you forthwith to convey the said [C. D.] to the house of correction at in the of , and to deliver him into the custody of the gaoler or keeper of the said house of correction, and I [*or we,*] the said justice or justices, [*as the case may be,*] do hereby authorise and require you, the said gaoler or keeper of the said house of correction, to receive and take the said [C. D.] into your custody, and him safely to keep to hard labour in your said house of correction for the period of months.

Given under hand and seal, at in the of , this day of in the year of our Lord

FORM OF CONDEMNATION OF SEIZED GOODS.

Be it remembered, that an information having been exhibited by to wit. } [A. B.] an officer of Customs, under the direction of the Commissioners of Customs, before me , one of Her Majesty's justices of the peace for the said of , for the condemnation of [*here state the goods,*] for being dealt with contrary to section of "The Customs Consolidation Act, 1876," whereby the same became liable to forfeiture, and which said goods having been claimed by [C. D.] of , who was duly summoned to show cause why the same should not be condemned as forfeited, and the forfeiture thereof having been duly proved before me, or us, [*as the case may be,*] I, or we, [*as the case may be,*] do adjudge the same to be forfeited, and to condemn the same accordingly.

Given under hand and seal at in the of , this day of in the year of our Lord

TABLE OF FEES.

Each information with or without oath on application for summons against defendant, or for warrant for apprehension of a defendant, or for a warrant for remand, if already detained	£	s.	d.
Summons to compel appearance of defendant or of a witness	0	2	6
Duplicate thereof	0	2	0
Search warrant	0	1	0
Search warrant	0	2	6
Warrant for apprehension or for remand.....	0	2	6
Taking examinations or depositions of witnesses, per folio	0	0	8
Copies for Revenue Solicitor when required by him, per folio	0	0	4
Taking down statement of defendant, if any	0	1	0
Warrant of commitment after conviction or for trial	0	2	6
Copy thereof for Revenue Solicitor if required by him.....	0	1	0
Each recognizance for a defendant's appearance	0	2	6
Recognizance to prosecute and give evidence when necessary.....	0	2	6
Recording conviction or acquittal	0	1	0
Engrossing conviction on parchment and filing same when required by Revenue Solicitor	0	6	0

THE INTESTATES ESTATES ACT, 1884.

(47 & 48 VICT. c. 71.)

An Act to amend the Law respecting the administration of the Personal Estate and the Escheat of the Real Estate of Deceased Persons; and for other purposes.

[14th August 1884.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Intestates Estates Act, 1884.

Short title.

2. Where the administration of the personal estate of any deceased person is granted to a nominee of Her Majesty (whether the Treasury Solicitor, or a person nominated by the Treasury Solicitor, or any other person), any action or other proceeding by or against such nominee for the recovery of the personal estate of such deceased person, or any share thereof, shall be of the same character, and be brought, instituted, and carried on in the same manner, and be subject to the same rules of law and equity (including the rules of limitation under the Statutes of Limitation or otherwise), in all respects as if the administration had been granted to such nominee as one of the next of kin of such deceased person.

Recovery of personal estate of deceased person where administration granted to nominee of the Crown.

See pp. 500, 626.

3. *After the passing of this Act* an information or other proceeding on the part of Her Majesty shall not be filed or instituted, and a petition of right shall not be presented, in respect of the personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought by or against a subject.

Limitation on proceedings to recover personal estate by or from Crown.

See pp. 500, 571. Words in italics repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

4. From and after the passing of this Act, where a person dies without an heir and intestate in respect of any real estate consisting of any estate or interest whether legal or equitable in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, whether devised or not devised to trustees by the will of such person, the law of escheat shall apply in the same manner as if the estate or interest above mentioned were a legal estate in corporeal hereditaments.

Escheat of real estate.

See p. 424.

5.—(1.) Where in any action or other proceeding in Her Majesty's High Court of Justice or in the Court of Chancery of the County Palatine of Lancaster it appears to the Court that Her Majesty is entitled to any hereditament, corporeal or incorporeal, or to any estate or interest, legal or equitable, therein, such Court may, on the application or with the consent of the Attorney-General, notwithstanding that no office has been found and no commission issued or executed, order a sale of the hereditament, estate, or interest, and such portion of the net proceeds of any such sale as represents the interest of Her Majesty shall be paid, invested, transferred, sold, or disposed of in manner provided by section four of the Treasury Solicitor Act, 1876.

Power of Court to sell interest of Crown in real estate.

39 & 40 Vict. c. 18.

(2.) Section one of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-five, intituled "An Act to extend the provisions of the Trustee Act, 1850," shall apply on any such sale in like manner as if any estate or interest of Her Majesty comprised in the sale were vested in a subject.

The Attorney-General can only apply under this section where proceedings are pending between persons interested, in which it appears that the Crown is entitled. For an instance, see *In re Pratt's Trusts*, [1886] W. N. 144; 55 L. T. 313. Words in italics repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

Power to
waive right
of Crown in
certain cases.
See 59
Geo. III.
c. 94.

6. Where a person dies without an heir and intestate in respect of all or any part of his real estate, whether his estate or interest therein is legal or equitable, and application is made for the waiver of any right of Her Majesty in respect of such intestacy to such estate by or on behalf of any person to whom, or to a trustee for whom, Her Majesty would, if Her Majesty's title had been duly found by inquisition, have power to grant such real estate, it shall be lawful for Her Majesty, by warrant under the hands of the Commissioners of Her Majesty's Treasury, or any two of them, to authorise the waiver of such right, on such terms, whether for the payment of money or otherwise, as may be specified in the warrant, and the Treasury Solicitor may, in pursuance of such warrant, convey to the person in whose favour such waiver is made the right of Her Majesty so waived: Provided, that if at any time not later than two years after such conveyance any person claiming any estate or interest in or to the said real estate demands that an inquisition in respect of Her Majesty's title shall be issued, and gives security to the satisfaction of the Treasury Solicitor for the costs of the issue and execution of such inquisition, such inquisition shall issue in like manner as if this section had not been enacted.

If no such inquisition issues, such conveyance shall be of the same effect as if it were a grant from Her Majesty after office found; and every person bringing an action to establish any claim to such real estate, or any part thereof, or interest therein, shall be in the same position and have the same rights as if he were traversing such office found.

See p. 436.

Definition of
intestacy.

7. Where any beneficial interest in the real estate of any deceased person, whether the estate or interest of such deceased person therein was legal or equitable, is, owing to the failure of the objects of the devise, or other circumstances happening before or after the death of such person, in whole or in part not effectually disposed of, such person shall be deemed, for the purposes of this Act, to have died intestate in respect of such part of the said beneficial interest as is ineffectually disposed of.

See pp. 424, 428.

Application
of Act to
Duchy of
Lancaster.

8. This Act shall extend to the Duchy of Lancaster, with this addition, that the Chancellor of the Duchy, the Attorney-General of the Duchy, and the Solicitor of the Duchy respectively, shall be substituted for the *Commissioners of Her Majesty's Treasury*, the Attorney-General, and the Treasury Solicitor respectively, and that the proceeds of any sale shall be applicable and be dealt with to all intents and purposes as such proceeds would or might have been applied or dealt with if the hereditaments, estate, or interest had been sold under or in pursuance of any other power in that behalf.

See p. 442. Words in italics repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

9. In the application of this Act to Ireland the following provisions shall take effect: Application of Act to Ireland.

- (a) The Crown and Treasury Solicitor for Ireland shall be substituted for the Treasury Solicitor.
- (b) The reference to the Treasury Solicitor Act, 1876, shall not apply. The portion of the net proceeds of any sale under this Act which represents the interest of Her Majesty in the hereditament, estate, or interest sold shall be dealt with and disposed of in such manner as the *Commissioners of Her Majesty's Treasury* may by general or special order from time to time direct.
- (c) Her Majesty's High Court of Justice in Ireland and the Attorney-General for Ireland shall be substituted for the High Court of Justice and the Attorney-General.

Words in italics repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

10. This Act shall not extend to Scotland.

Extent of Act.

THE ESCHEAT (PROCEDURE) ACT, 1887.

(50 & 51 VICT. c. 53.)

An Act for repealing certain Enactments relating to Escheators and the Procedure in cases of Escheat; and for regulating the Procedure in such cases.

[16th September 1887.]

Whereas most of the enactments relating to escheators and the process of finding the title of the Crown in cases of escheat are now practically inoperative, and it is expedient to repeal them, and to authorise rules to be made for regulating the procedure in such cases:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Escheat (Procedure) Act, 1887.

Short title.

2.—(1.) The Lord Chancellor may from time to time, with the assent of the Treasury, make rules for the procedure on and incidental to and consequential on the holding of inquiries into the title of Her Majesty in right of the Crown, or the title of the Duke of Cornwall, or of the personage for the time being entitled to the possessions of the Duchy of Cornwall, to any real estate or any interest therein in cases of escheat or alleged escheat, whether in relation to the Crown or otherwise, or the holding of any inquest of office not otherwise regulated by law. Power to regulate procedure with respect to escheats to Crown.

(2.) Such rules shall provide that an inquisition touching real estate shall find of whom the real estate was held, and that every inquisition shall be forthwith returned into the Central Office of the Supreme Court of Judicature, and that every person aggrieved by any such inquisition shall be entitled to traverse the same, or to object thereto, in such manner as may be from time to time directed by Rules of Court.

47 & 48 Vict.
c. 71.

(3.) Subject to the provisions of section six of the Intestates Estates Act, 1884, no grant shall be made of any real estate alleged to be escheated after the inquisition finding the title thereto has been returned to the Central Office of the Supreme Court of Judicature.

(4.) An inquisition shall not prejudice any rights which, at the time of the death of the person that led to the inquisition, were vested in some other person.

(5.) If the inquisition does not find of whom the real estate was held, any person aggrieved shall be entitled to obtain from the High Court an order for the taking of another inquisition.

(6.) This Act shall apply to inquiries into the title of Her Majesty in right of Her Duchy of Lancaster, with this qualification, that any rules which may be made under this Act shall be made by the Chancellor of the Duchy of Lancaster with the approval of the Lord Chancellor.

(7.) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

See p. 429. The Rules for England and Wales, including the Duchy of Cornwall, are printed below, p. 833. No rules have hitherto been made for the Duchy of Lancaster.

Repeal.

3. The Acts mentioned in the Schedule to this Act are hereby repealed to the extent in that Schedule mentioned.

Provided that—

- (1.) This repeal shall not affect the validity or invalidity of anything done or suffered, or any right accrued or liability incurred before the commencement of this Act, or any proceedings pending at the commencement of this Act; and
- (2.) Any such proceeding may be carried on in like manner as if this Act had not been passed; and
- (3.) Except so far as may be otherwise directed by rules under this Act, any procedure or practice heretofore in use under the provisions of any Act hereby repealed or otherwise may be used as if this Act had not been passed.

SCHEDULE.

This Schedule is to be read as referring to the revised edition of the statutes prepared under the direction of the Statute Law Committee.

The chapters of the statutes (before the division into separate Acts) are described by the marginal abstracts given in that edition.

The repeal by the present Act of a part of a statute set out or referred to in terms of the translation given in that edition is to operate on the original Latin or Norman-French, of which the translation is set out or referred to, as if the original itself were in like manner set out or referred to.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end of the portion comprised in the description or citation.

29 Edw. I.	A statute for escheators.
14 Edw. III. stat. 1, c. 8.	Escheators: their number; appointment; continuance in office; Coroners: their sufficiency. In part: namely, except so far as relates to Coroners.
25 Edw. III. stat. 5, c. 2.	Declaration what offences shall be adjudged treason, &c. In part, namely: from "and if in such case" to end of chapter.
36 Edw. III. c. 13 ...	Escheators shall have no fee of lands in wards, nor commit waste. Fine, and treble damages to the heir injured. Extended to lands seized by inquest of office. Such inquisitions may be traversed in Chancery. The land may be demised to the tenant until judgment. Escheators shall take inquests as directed by the statute 34 Edw. III. c. 13 (a) on penalty of fine and imprisonment.
8 Hen. VI. c. 16	Escheators shall take no inquests but by persons returned by the sheriffs in their proper counties; on penalty of forty pounds. No lands seized into the King's hands upon inquests shall be let to farm until after inquests returned; if the party aggrieved traverse the inquests, within a month, the lands shall be let to farm to him, as under 36 Edw. III. c. 13. All letters patent to the contrary void. Escheators shall return offices found before them within a month.
18 Hen. VI. c. 6	Recital of the statute 8 Hen. VI. c. 16 as to grant of lands by the King after office found. No grant of lands shall be made by the King, until office found and returned, if the King's title be not of record; nor within the month after such return, unless to the traverser.
18 Hen. VI. c. 7	Escheators not duly returning offices shall pay damages to the King, &c. above the penalty under statute 8 Hen. VI. c. 16.
23 Hen. VI. c. 16	Treasurer shall be associate with the Chancellor, &c. When and where escheators shall take inquests: Fees of escheators. Penalty. On traverse of inquest no protection in scire facias. Leases to traversers.
1 Hen. VIII. c. 8	An Acte agaynst Escheators and Comysioners for makinge false retornes of Office and Comysions.
1 Hen. VIII. c. 10 ...	An Act that noe Lease shalbe made of Lande seized into the King's Hande, but in certayne cases.
2 & 3 Edw. VI. c. 8 ...	An Acte towchinge the findinge of Offices before the Escheator.

(a) Repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59).

THE INLAND REVENUE REGULATION ACT, 1890.

(53 & 54 VICT. c. 21.)

Legal Proceedings.

Institution of
proceedings
for fines, &c.

21.—(1.) It shall not be lawful to commence proceedings against any person for the recovery of any fine, penalty, or forfeiture under any Act relating to Inland Revenue, or for the condemnation of any goods seized as forfeited under any such Act, except by order of the Commissioners and in the name of an officer, or in England in the name of the Attorney-General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney-General for Ireland.

(2.) Provided that nothing in this section shall extend to any summary proceeding for the conviction on immediate arrest of any person under or by virtue of any Act relating to Inland Revenue, or to any proceeding on information or complaint of an officer of the peace for recovery of a fine or penalty imposed in relation to an offence against any law of Excise in any case in which such a proceeding is authorised.

(3.) The power of the Commissioners, or any of them, to hear and determine informations for the recovery of any fine or penalty, or for the condemnation of any goods seized as forfeited, shall cease, and any information which might, under any enactment passed before the commencement of this Act, have been exhibited, heard, adjudged and determined by the Commissioners, or any of them, may be exhibited, heard, adjudged, and determined before a Court of summary jurisdiction, and shall be subject to the like appeal as in the case of an information exhibited before a justice of the peace in respect of any offence against the laws of Excise.

Proceedings
in the High
Court.

22.—(1.) Any fine or penalty incurred under any Act relating to Inland Revenue may be sued for and recovered, and any goods seized as forfeited under any such Act may be returned for condemnation and condemned, in the High Court.

(2.) The proceedings for the recovery of any such fine or penalty or for the condemnation of any such goods shall be commenced within two years next after the fine or penalty is incurred or the seizure is made.

Service of
process.

23.—(1.) Any writ of subpœna or other process issued out of the High Court in relation to any proceeding for recovery of Inland Revenue or any fine or penalty imposed by any Act relating to Inland Revenue, or for the condemnation of any goods seized as forfeited under any such Act, may be served on any person in any part of the United Kingdom.

(2.) If any person so served does not appear according to the exigency of the writ or process, the High Court may on proof of service transmit a certificate of the default under the seal of the Court to the High Court in that part of the United Kingdom in which the writ or process was served, and the last-mentioned Court shall proceed against and punish the person so making default in the same manner as if he had neglected to appear in obedience to a like writ or process issued out of that last-mentioned Court.

(3.) Where the writ or process served is to give evidence, a person failing to appear in answer thereto shall not be punished on account thereof, unless it be

shown to the satisfaction of the Court that a reasonable sum of money for expenses had been tendered to him before the default.

(4.) Nothing in this section shall affect the procedure in Scotland under the Act of the session held in the nineteenth and twentieth years of Her Majesty's reign, chapter fifty-six.

24.—(1.) All regulations, minutes, and notices purporting to be signed by a secretary or assistant secretary of the Commissioners and by their order shall, until the contrary is proved, be deemed to have been so signed and to have been made and issued by the Commissioners, and may be proved by the production of a copy thereof purporting to have been so signed. Rules as to evidence in certain cases.

(2.) In any proceeding the letter or instructions under which a collector or officer or person employed in relation to Inland Revenue has acted shall be sufficient evidence of any order issued by the Treasury or by the Commissioners, and mentioned or referred to therein.

(3.) Evidence of a person being reputed to be or having acted as a Commissioner, or collector, or officer, or person employed in relation to Inland Revenue, shall, unless the contrary is proved, be sufficient evidence of his appointment or authority to act as such.

See above, p. 172.

25.—(1.) Where goods seized as forfeited under any Act relating to Inland Revenue are returned into the High Court, any claim thereto must be made within the time limited by law or the practice of the Court, and must be entered in the name of the proprietor of the goods, and must describe his place of residence and his business or profession. Procedure for condemnation of seizures.

(2.) The person entering any such claim or his solicitor must, in England or Ireland, within the time limited by law or the practice of the Court in which the claim is entered, make oath that the goods were at the time of the seizure the property of the person claiming the same, and be bound with two sufficient sureties in the sum of one hundred pounds to pay the costs occasioned by the claim. In default of making such oath, or giving such security, the goods shall be adjudged to be forfeited, and shall be condemned as unclaimed.

(3.) In any trial whatsoever arising upon a seizure, the fact, form, and manner of the seizure shall be taken to have been as set forth in the information relating thereto without any evidence thereof.

(4.) Where any goods seized as forfeited are not within the space of three months after the seizure thereof claimed by the proprietor by application in writing either to the Commissioners or to the officer who seized the same or has the custody thereof, they shall be absolutely forfeited as if they had been condemned by judgment of the High Court.

(5.) Nothing in this section shall affect the forfeiture of any goods seized under any Act whereby goods liable to seizure and seized are declared to be absolutely forfeited.

26.—(1.) In the event of any horse or cattle or any goods of a perishable nature being seized as forfeited under any Act relating to Inland Revenue, the Commissioners may order the thing seized to be delivered up to the claimer thereof upon his paying the appraised value thereof or giving security to their satisfaction. Procedure on seizure of horses, cattle or perishable goods.

(2.) If any such thing be not claimed, or if any claimer refuses or neglects to pay the appraised value thereof, or to give such security as aforesaid, the

Commissioners may at any time after the expiration of fourteen days from the making of the seizure order that it be sold by public auction, although the condemnation thereof may not at that time have taken place.

(3.) Provided that if any such thing be afterwards ordered to be restored without any proceeding being instituted for the condemnation thereof, or before the same have been condemned, or if on the trial for the condemnation thereof, judgment is given for the claimer, the Commissioners shall on demand pay to him the appraised value thereof, or, in the event of its having been sold, then at his election the appraised value or the proceeds of the sale thereof, and in either case such further sum by way of compensation for the loss sustained by reason of the seizure as the Commissioners think fit.

(4.) If the claimer accepts the appraised value or proceeds of sale, with such further sum as aforesaid, he shall not be entitled to maintain any action on account of the seizure, detention, or sale.

Officers may
conduct
proceedings
before
justices.

27. Any officer or person employed or authorized by the Commissioners or the Solicitor of Inland Revenue in that behalf may, although he is not a solicitor, advocate, or writer to the signet, prosecute, conduct, or defend any information, complaint, or other proceeding to be heard or determined by any justice of the peace in the United Kingdom or by any sheriff in Scotland where the proceeding relates to Inland Revenue or to any fine, penalty, or other matter under the care and management of the Commissioners.

Sect. 38 of the Finance Act, 1896 (59 & 60 Vict. c. 28), makes the following addition to this section:—Any person who has been admitted as a solicitor, and is employed or authorized by the Commissioners or the Solicitor of Inland Revenue, may appear in, conduct, defend, and address the Court in any legal proceeding in a County Court in England or Ireland where the proceeding relates to Inland Revenue or to any matter under the care or management of the Commissioners of Inland Revenue.

28. [Relating to actions against officers, was repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 2 and Schedule.]

Protection of
officers where
probable cause
of seizure
certified.

29.—(1.) Where on the trial of an information or complaint for the condemnation of goods seized as forfeited under any Act relating to Inland Revenue judgment is given for the claimer thereof, if the Court or judge certifies that there was probable cause for making the seizure, no officer or person who made or assisted in making the seizure shall be liable to any civil or criminal proceeding on account of the seizure, or detention of the goods.

(2.) Where any civil or criminal proceeding is brought to trial against any officer or person employed in relation to Inland Revenue on account of the seizing or detention of any goods, and a verdict or judgment is given thereupon against the defendant, if the Court or judge certifies that there was probable cause for the seizure, the plaintiff shall not be entitled to any damages, besides the goods seized, or the value thereof, nor to any costs, and the defendant shall not be liable to any punishment.

Fines, Penalties and Forfeitures.

Goods for-
feited may be
seized.

30.—(1.) All goods forfeited by virtue of any Act relating to Inland Revenue may be seized by any officer or by any person employed in relation to Inland Revenue or acting in the aid and assistance of any such officer or person.

(2.) Where any goods are forfeited under any such Act, every cask, vessel, case, or other package containing or having contained the same, and every ship,

boat, cart, or other conveyance, and all horses or other cattle, and all things used in the removal or for the deposit or concealment thereof, shall be forfeited.

31. Goods seized as forfeited by virtue of any Act relating to Inland Revenue shall after condemnation be sold or destroyed or otherwise disposed of in accordance with the prescribed regulations. Disposal of forfeitures.

Provided that goods which are subject to duty but upon which duty has not been paid shall not be sold for home consumption at a less price than the amount of the duty payable thereon, and goods, the importation whereof is prohibited, shall, if sold, be sold for exportation only.

32. The Commissioners may at their discretion reward any person who informs them of any offence against any Act relating to Inland Revenue or assists in the recovery of any fine or penalty, provided that a reward exceeding fifty pounds shall not be paid in any case without the consent of the Treasury. Power to reward informers.

33.—(1.) All fines, penalties, and forfeitures incurred under any Act relating to Inland Revenue which are not otherwise legally appropriated, shall be applied to the use of Her Majesty. Application of fines.

(2.) All fines and penalties and the proceeds of all forfeitures incurred under any such Act, and all costs, charges, and expenses payable in respect thereof or in relation thereto respectively, shall be accounted for and paid to the Commissioners or as they direct.

34. All costs, charges, and expenses payable by the Commissioners in respect of proceedings for the recovery of any fine, penalty, or forfeiture incurred under any Act relating to Inland Revenue, and all sums of money allowed as rewards, shall be deemed to be charges of collection and management, and shall be paid out of money provided by Parliament for that purpose. Expenses of prosecutions.

35.—(1.) The Commissioners may in their discretion mitigate any fine or penalty incurred under this Act or any other Act relating to Inland Revenue, or stay or compound any proceedings for recovery thereof or for the condemnation of any seizure, and may restore any thing seized, and may also after judgment further mitigate or entirely remit any such fine or penalty, and order any person imprisoned for any offence against Inland Revenue to be discharged before the term of his imprisonment has expired. Power to mitigate fines and stay proceedings.

(2.) The Treasury may mitigate or remit any such fine or penalty either before or after judgment, and may direct any thing seized to be restored to the proprietor or claimer thereof.

36. All fines imposed by this Act may be proceeded for and recovered in the same manner and in the case of summary proceedings with the like power of appeal, as any fine or penalty under any Act relating to the Excise. Recovery of fines imposed by this Act.

Construction.

37.—(1.) Where in any Act passed before the commencement of this Act, the limits of the Chief Office of Inland Revenue or the limits of the Chief Office of Excise are referred to as the limits within which any powers of the Commissioners may be exercised, those powers may be exercised in the City of London and the Metropolitan Police District. Meaning of certain expressions in past Acts, &c.

(2.) Where in any Act, or in any bond, security, deed or other instrument or writing, reference is made to the "Commissioners of Excise," "Commissioners of Stamps and Taxes," "Commissioners of Stamps," or "Commissioners for the Affairs of Taxes," or any officer or person appointed by those Commissioners

respectively, the Act, bond, security, deed or other instrument or writing shall be construed as referring to the Commissioners and officers and persons appointed by them, or acting under their orders and directions.

General
definitions in
Revenue Acts.

38.—(1.) In this Act, and in every other Act relating to Inland Revenue, whether passed before or after the commencement of this Act, expressions referring to England shall be construed as applying also to Wales.

(2.) For the purpose of construing any Act of Parliament relating to Inland Revenue, whether passed before or after the commencement of this Act, "night" shall be deemed to begin at eleven of the clock in the evening of each day, and to end at five of the clock in the morning of the next succeeding day.

Definitions.

39. In this Act, unless the context otherwise requires,—

"Inland Revenue" means the revenue of the United Kingdom collected or imposed as stamp duties, taxes, and duties of Excise, and placed under the care and management of the Commissioners, and any part thereof:

"Commissioner" means Commissioner of Inland Revenue:

"Accountant-General" means Accountant and Comptroller-General of Inland Revenue:

"Receiver-General" means Receiver-General of Inland Revenue:

"Collector" means Collector of Inland Revenue:

"Officer" means Officer of Inland Revenue:

"Goods" includes commodities and chattels:

"Prescribed" means prescribed by the Commissioners:

"High Court" means, as respects Scotland, the Court of Session sitting as the Court of Exchequer:

"Plaintiff" and "defendant" include, as respects Scotland, pursuer and defender respectively.

THE FINANCE ACT, 1894.

(57 & 58 VICT. c. 30.)

Appeal
from Com-
missioners.

10.—(1.) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by Rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section, except with the leave of the High Court or Court of Appeal.

(3.) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4.) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5.) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the County Court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such County Court were the High Court : [Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.]

The words in brackets were added by the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 22.

(6.) The county council of every county or county borough in Great Britain shall within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the cost of any such arbitration shall be part of the costs of the appeal.

The High Court Rules made under this section are printed below, p. 801; the County Court Rules, p. 802.

PETTY BAG RULES, 1848.

PETTY BAG RULES, 1848.

GENERAL RULES AND ORDERS MADE DECEMBER 29, 1848, UNDER 11 & 12 VICT.
c. 94.

This Act was repealed by sect. 12 of the Great Seal (Officers) Act, 1874 (37 & 38 Vict. c. 81), with a saving of anything done thereunder.

The Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, with the advice and assistance of Henry Lord Langdale, Master of the Rolls, doth hereby in pursuance of an Act of Parliament, made and passed in the session of Parliament held in the 11th and 12th years of the reign of Her present Majesty, intituled "An Act to regulate certain offices in the Petty Bag in the High Court of Chancery, the practice of the Common Law side of that Court and the Enrolment Office of the said Court," and in pursuance of all other powers enabling him in this behalf, do order and direct, that all and every the Rules, Orders, and directions hereinafter set forth shall henceforth be and be for all purposes deemed and taken to be general Rules and Orders of the High Court of Chancery on the Common Law side thereof, viz. :—

Introductory.

1. All former Rules and Orders regulating the practice and proceedings in the Petty Bag Office, so far as the same are now in force, and are consistent with the said Act of Parliament and with these Orders are to remain in force and effect.

2. These Orders as to all suits, matters, and proceedings now pending, or hereafter to be commenced, are (so far as the same are applicable to the state of such matters and proceedings), to take effect on the 1st day of January, 1849.

Official Attendance and Vacations.

3. In the office of the Petty Bag :—

1. The office is to be opened and closed on the same days ; and

2. The vacations are to be observed at the same time ; and

3. The clerk is to attend in the office during the same hours,

as are for the same purposes and in relation to the same matters appointed by the general Rules of the Court of Chancery in the Office of the Clerks of Records and Writs subject nevertheless to such alterations as for some special reasons may be at any time made by the Lord Chancellor, with the advice and assistance of the Master of the Rolls.

Clerk of the Petty Bag.

As to the present representative of the Clerk of the Petty Bag, see above, p. 430.

4. The Clerk of the Petty Bag is to have the care and custody of the Chancery Common Law Seal, and is to use and employ the same for sealing such several writs, and all such documents and writings as are by the said Act authorised to be sealed with the same seals.

The King's Bench Seal is now used instead of the Chancery Common Law Seal.

5. Affidavits, affirmations, and declarations to be used in any proceeding on the Common Law side of the Court are to be sworn, affirmed, or declared before the Clerk of the Petty Bag, or before a Master Extraordinary of the High Court of Chancery, and are to be filed in the Office of the Petty Bag.

6. Every writ, rule, or document issued or delivered out of the Petty Bag Office is to be tested or dated on the day on which the writ is sealed, or the rule or other document is made.

7. Every writ returned by the sheriff is to be immediately filed, and thereupon the day and hour of the filing are to be indorsed on the writ.

8. The Clerk of the Petty Bag, upon receiving the return of the transcript of the verdict of the jury, and proceedings or judgment of any Court of common law upon an issue in law or in fact is to file the same in the Petty Bag Office and is to cause an entry to be made of such verdict and proceedings, or judgment, and such transcript is to be annexed to the original record in the Petty Bag Office, and thereupon the judgment of the Court of Chancery is to be entered on, or annexed to, the same record in conformity with the judgment of the Court from which the transcript is returned.

Attorney.

9. Every solicitor, whose name is duly enrolled as such in the High Court of Chancery, may act as an attorney in any action, suit, matter, or proceeding pending on the Common Law side of the same Court, and is to be therein named and treated as the attorney of the party by whom he is retained.

10. Any party changing or ceasing to employ his attorney in the course of any action, suit, or proceeding is to cause an entry of such change or cessation of employment to be made and entered with the Clerk of the Petty Bag, and to cause notice of such change or cessation of employment and of such entry to be served on every party to the action, suit, or proceeding, and until such entry and notice shall have been made and served, the former attorney is to be deemed and taken, for all purposes of the action, suit, or proceeding, to be and remain the attorney of the party.

Scire Facias.

11, 12. . . . [*These Rules were abrogated by an Order made August 3rd, 1849, under the Petty Bag Act, 1849 (12 & 13 Vict. c. 109).*]

13. The proceedings and trial in an action of scire facias may take place and be had in such one of Her Majesty's Superior Courts of Common Law as may be chosen by the party applying to have the writ sealed.

14. A writ of scire facias to revoke letters patent is not to be sealed (1) until the fiat of the Attorney-General is filed in the Petty Bag Office; (2) until the name of some one of Her Majesty's Superior Courts of Common Law is indorsed or written therein; (3) until a true copy of the writ and of any drawings or plans annexed thereto (to be verified by affidavit) has been filed in the Petty Bag Office.

See above, p. 537.

15. If such writ has been sealed before the 1st day of January, 1849, and the record of the action has not been carried or transmitted into the Court of

Queen's Bench, the name of some one of Her Majesty's Superior Courts of Common Law is to be indorsed on the writ and a memorandum thereof entered with the Clerk of the Petty Bag Office before any subsequent proceeding is taken in the action.

16. The trial and any proceedings in an action of scire facias are to take place in the Court of Common Law, the name of which is indorsed or written on the writ.

17. A bond of indemnity against costs, to be incurred in the prosecution of an action of scire facias, may (if so desired by the Attorney-General) be taken in the name of the Clerk of the Petty Bag; but the same is not to be deposited or filed in the office of the Petty Bag, unless the intended obligors, and the sums for which they are to give security, be named by the Attorney-General.

18. A bond of indemnity filed or deposited in the Petty Bag Office may, at the request of the Attorney-General, be put in suit under such circumstances, and upon such terms and conditions as the Lord Chancellor or the Master of the Rolls may approve of.

19. An appearance is to be entered by or on behalf of any defendant who has been summoned by the sheriff within eight days of the writ of a scire facias has been returned and filed.

The Clerk of the Petty Bag is until further order to receive and take the several fees which are set forth in the Schedule hereunder written, and is to account for the same and pay the amount thereof into the Suitors' Fee Fund in the same manner and at the same times as the Clerks of Records and Writs receive, account for, and pay the fees received by them in their office.

THE SCHEDULE ABOVE REFERRED TO.

	£	s.	d.
Fees to be received by the Clerk of the Petty Bag :—			
For attending with records or other documents in any Court or place (besides expenses to be retained by the Officer to his own use) per diem.....	2	2	0
For filing the returns to all special commissions and writs of peace on supplicavit, and commissions and writs of every kind returned and filed in this Office	0	2	6
Drawing and signing the certificate under the officer's hand of any return being filed in this Office where no office copy is taken	0	2	0
For preparing and issuing every certiorari other than to remove causes from the inferior Courts	3	0	0
For preparing every mittimus and transcript of commission of lunacy, return and inquisition thereon to the Lord Chancellor of Ireland	3	0	0
For preparing and issuing every special commission to seize lands escheated to the Crown or purchased by aliens or forfeited by felons, of one skin only	6	0	0
For every additional skin	3	0	0

These Commissions are now issued by the Clerk of the Crown in Chancery, see p. 432. As to aliens and felons, see pp. 420, 481.

For examining and filing every bond of indemnity against costs and affidavits	£	s.	d.
For filing a traverse to an inquisition	1	0	0
For filing a traverse to an inquisition	2	0	0
Entering appearance for every defendant	0	10	0
For entering every rule requiring entry only	0	7	0
For drawing up and entering every other rule	0	10	0
For drawing up and entering a special order	2	0	0
For signing every judgment or entry of nolle prosequi	1	0	0
For filing order for delivery out of bond.....	0	10	0
For swearing every deponent to an affidavit	0	1	6
For every exhibit thereto	0	2	6
For taxing a bill of costs, for every side	0	1	0
For filing every affidavit	0	1	0
For office copy of affidavit, per folio.....	0	0	4
On filing every bill against an officer of the Court	0	10	0
For preparing, engrossing, and perfecting the exemplification of any record, if one skin only	5	5	0
For every additional skin	1	6	8
For every search for a præcipe or writ filed	0	1	0
For searching the calendar for every year	0	1	0
For inspection of any record besides the search.....	0	2	6
For the office copy of any record, per folio.....	0	0	4
For certificate of examination under the officer's hand and the office seal	0	3	4
For the re-examination of the copy of any record, if short	0	3	6
If long, per folio	0	0	1
* * * * *			

Cottenham, C.
Langdaie, M. R.

RULE OF THE SUPREME COURT, DATED JANUARY 30, 1889, TRANSFERRING TO CHIEF CLERK OF THE CROWN OFFICE CERTAIN DUTIES OF THE CLERK OF THE PETTY BAG.

From and after the 1st day of February, 1889, all the duties and powers which by virtue of the fifth section of the Great Seal (Offices) Act, 1874, and of the Supreme Court of Judicature Acts, are, or ought upon the abolition of the office of Clerk of the Petty Bag, to be performed by or vested in such officer of the Supreme Court of Judicature in England as may be directed by Rules of Court under the Supreme Court of Judicature Act, 1873 (except such of the same duties and powers as are by the Solicitors Act, 1888, directed to be performed or exercised by the Incorporated Law Society as Registrar of Solicitors), shall be performed by and vested in the Senior Clerk for the time being of the Crown Office Department of the Central Office.

Halsbury, C.
Coleridge, C. J.
Esher, M. R.
Nath. Lindley, L. J.
C. E. Pollock.

January 30th, 1889.

RULES OF HILARY TERM, 1853.

Applied by Exchequer Rules, 75, 76, 113, pp. 765, 770.

29. The form of notice to admit documents referred to in the Common Law Procedure Act, 1852, s. 117, may be as follows :—

In the Q. B.)
 C. P.)
 Or Excheq. } A. B. v. C. D.

Take notice, that the { plaintiff
 defendant } in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the { defendant
 plaintiff } his attorney or agent at , in , between the hours of , and the { defendant
 plaintiff } is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been ; that such as are specified as copies, are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

G. H., Attorney,

[or " Agent "] for { plaintiff
 defendant } .

To E. F., Attorney,

[or " Agent "] for { defendant
 plaintiff } .

[Here describe the documents, the manner of doing which may be as follows] :—

ORIGINALS.

Description of the Documents.	Date.
Deed of covenant between A. B. and C. D., 1st part, and E. F., 2nd part.	1st January, 1848.
Indenture of lease from A. B. to C. D.	1st February, 1848.
Indenture of release between A. B., C. D., 1st part, &c...	2nd February, 1848.
Letter, defendant to plaintiff	1st March, 1848.
Policy of insurance on goods by ship "Isabella" on voyage from Operto to London.	3rd December, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F.	1st January, 1848.
Bill of Exchange for 100 <i>l.</i> at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	1st May, 1849.

COPIES.

Description of Documents.	Dates.	Original or duplicate, served, sent, or delivered, when, how, and by whom.
Register of baptism of A. B. in the parish of X.	Jan. 1, 1808.	
Letter, plaintiff to defendant...	Feb. 1, 1848.	Sent by general post, Feb. 2, 1848.
Notice to produce papers	March 1, 1848.	Served March 2, 1848, on defendant's attorney, by E. F., of .
Record of a judgment of the Court of Queen's Bench in an action, J. S. v. J. N.	Trinity Term, 10th Vict.	
Letters patent of King Charles II. in the Rolls Chapel.	Jan. 1, 1680.	

These provisions apply to every document a party means to adduce in evidence, and are not confined to documents in his custody or control; but where the notice includes documents not in his custody or control, it may be varied accordingly, and may, if necessary, contain a special clause stating his inability, for such and such reasons, to give an inspection of the documents. (*Rutter v. Chapman* (1841), 8 M. & W. 388; 11 L. J. Ex. 178; see Day's Common Law Procedure Acts (ed. 4), pp. 138, 425.)

30. In all cases of trials, writs of inquiry, or inquisitions of any kind, either party may call on the other party, by notice, to admit documents in the manner provided by and subject to the provisions of the Common Law Procedure Act, 1852; and in case of the refusal or neglect to admit after such notice given, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be; unless at the trial or inquisition the judge or presiding officer shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is, in the opinion of the master, a saving of expense.

See *Spencer v. Barrough* (1842), 9 M. & W. 425; 11 L. J. Ex. 378; and Day's Common Law Procedure Acts (ed. 4), p. 138.

44. No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin), except on an affidavit either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and, in the latter case, no such rule is to be granted unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn up at any time.

45. No cause shall be tried by a special jury in Middlesex or London, unless the rule for such special jury be served, and the cause marked in the Associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex and London respectively for the trial of special juries.

Superseded by the Juries Act, 1870 (33 & 34 Vict. c. 77), s. 18.

46. There shall be no rule for the sheriff to return a good jury upon a writ of inquiry, but an order shall be made by a judge upon summons for that purpose.

47. Sheriffs, other than the sheriffs of London and Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes, as directed by the Common Law Procedure Act, 1852; but such special jury need not be summoned except notice be given as provided for by the 112th section of the said Act.

The exception of the sheriffs of London and Middlesex was removed by sect. 16 of the Juries Act, 1870 (33 & 34 Vict. c. 77).

48. The rule for a view may in all cases be drawn up by the officer of the Court, on the application of the party, without a motion for that purpose.

As to a refusal to grant a view, see *A.-G. v. Green* (1814), 1 Price, 130.

49. Upon any application for a view there shall be an affidavit stating the place at which the view is to be made, and the distance thereof from the office of the under sheriff, and the sum to be deposited in the hand of the under sheriff shall be 10*l.* in case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles, and 15*l.* in case of a common jury, and 21*l.* in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under sheriff; and the under sheriff shall pay and account for the money so deposited according to the scale following, that is to say :—

	£	s.	d.
For travelling expenses to the under sheriff, showers, and jurymen, expenses actually paid, if reasonable.			
Fee to the under sheriff, when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	0	0
Fee to each of the showers the same as the under sheriff, calculating the distance from their respective places of abode.			
Fee to each common jurymen, per diem	0	5	0
For each special jurymen, per diem.....	1	1	0
Allowance for refreshment to the under sheriff, showers, and jurymen, whether common or special, each per diem	0	5	0
To the bailiff for summoning each jurymen whose residence is not more than five miles distant from the office of the under sheriff.....	0	2	6
And to each whose residence does exceed five miles of such distance...	0	5	0

130—134. [As to returning writs or bringing in the body, &c., have been superseded by Ord. LII. r. 11, applied by Ord. LXVIII. r. 2.]

RULES FOR PROCEEDINGS AT LAW ON THE REVENUE SIDE OF THE EXCHEQUER, 1860.

REGULATIONS DATED JUNE 22ND, 1860, MADE BY THE LORD CHIEF BARON, &C. AS TO THE PRACTICE, &C. ON THE REVENUE SIDE OF THE COURT OF EXCHEQUER [as amended by Regulations, dated November 26th, 1861].

In pursuance of the provisions contained in the 26th section of 22 & 23 Vict. c. 21, intituled an Act to regulate the Office of Queen's Remembrancer, and to amend the Practice and Procedure on the Revenue Side of the Court of Exchequer. It is ordered that the following Rules in respect of the matters hereafter mentioned shall be in force on the Revenue Side of the Court of Exchequer.

The Act referred to is the Queen's Remembrancer Act, 1859, printed above, p. 676. These Rules, by Rule 143, do not apply to equity proceedings, which are governed by the Exchequer Rules, 1866, printed below, p. 808. The amending Rules will be found below, p. 800. Throughout these Rules "King's Bench Division" must be read for "Court of Exchequer."

General Rule as to Issuing Writs.

1. All writs to be hereafter sued out by the solicitor of any department, or by any attorney, shall be prepared by the solicitor of such department, or by the attorney suing out the same, and the name of such solicitor, or the name and address of such attorney, together with the name of the department (if any) on behalf of which the writ is sued out, shall be indorsed thereon; and every such writ shall, before the issuing thereof, be sealed at the Queen's Remembrancer's office, and a præcipe thereof left at the said office; and thereupon an entry of every such writ, together with the date of sealing, and the name of the solicitor or attorney suing out the same shall be made in a book, to be kept at the Queen's Remembrancer's office for that purpose; and all writs of whatever description to be hereafter issued from the said Queen's Remembrancer's office shall be tested of the day, month, and year when issued; but in case any writ or writs of extent or diem clausit extremum shall issue within twenty-one days from the date of the fiat the same may bear teste the date of the fiat, *provided* that this rule is not to affect the right of the Crown applying to the Court, or a judge, for a writ of extent or diem clausit extremum tested the date of the fiat, nor to affect commissions for enclosing waste land in any of the Royal forests, process against parishes or collectors under 5 & 6 Will. IV. c. 20, s. 11, or commissions for taking the bond of a public officer, which may be issued as at present.

The Act 5 & 6 Will. IV. c. 20, was repealed by the Inland Revenue Regulation Act, 1890, s. 40 and Schedule. See now also Ord. II. r. 8, applied by Ord. LXVIII. r. 2A, and above, pp. 215, 230. See also the general observation at the head of the schedules to these Rules, p. 775, and the remarks on p. 754.

Subpœna ad Respondendum.

See, generally, pp. 223, 230.

The proceeding by subpœna ad respondendum may be thus :—

2. The writ of subpœna may be either in Form 1, 2, or 3, Schedule A., according to the circumstances, and shall be in force six calendar months from the date thereof; and at any time during six months from the issuing or

renewing, as hereinafter mentioned, of the original writ of subpœna, one or more concurrent writ or writs may issue, each concurrent writ to bear teste of the same day as the original writ, and to be sealed and marked "concurrent," and the date of issuing the concurrent writ; and such concurrent writ or writs shall only be in force for the period during which the original writ of subpœna shall be in force; but if any defendant therein named may not have been served therewith, the original or concurrent writ of subpœna may be renewed at any time before its expiration for six months from the date of such renewal, and so from time to time during the currency of the renewed writ, by being sealed and marked of the day, month, and year of such renewal, and a writ of subpœna so renewed shall remain in force, and be available to prevent the operation of any statute whereby the time for the commencement of the suit may be limited, and for all other purposes, from the date of the issuing of the original writ of subpœna.

A writ may be sealed with an indorsement not stating the sum sued for, but the solicitor to the Department issuing it must take upon himself any risk of future inconvenience arising therefrom in the course of the suit.

It was decided by the Queen's Remembrancer in *A.-G. to the Prince of Wales v. Ancrum* (1876), not reported, that the six months above mentioned did not include the date of the previous renewal, so a writ of subpœna renewed on Aug. 14, 1875, was renewed again on Feb. 14, 1876.

This was the practice on the Plea side under the Common Law Procedure Act, 1852.

3. In order to proceed to judgment under the following Rules the service of the writ shall, where practicable, be personal; but the order of a judge may be obtained under special circumstances, on affidavit, to dispense with personal service, and to proceed as in the practice on the Common Law side of the Court.

A defendant may be served otherwise than personally without a judge's order, but he cannot have judgment signed against him unless this Rule is followed; if it is not, he can only be attached and process continued under the second portion of Rule 8.

4. The appearance to be in fourteen days from day of service, inclusive of the day of service.

5. If defendant does not appear according to the exigency of the writ, judgment may be signed on filing an information (if not previously filed) and an affidavit of service, or the order to proceed, and in all cases where the claim is in respect of a debt, penalty, or liquidated demand in money, execution may issue in fourteen days from the day of signing judgment.

The words on the subpœna are "at the expiration of fourteen days from the day of signing such judgment" (see forms on pp. 260, 775, 776); consequently that number of clear days must elapse between the day on which judgment is signed and the day on which execution is issued.

6. If defendant appears in due time, a copy of the information must be delivered to the defendant, or his attorney, in case he appears by attorney, and notice given (either on the information or separately) to plead in fourteen days from the day of service of such notice, otherwise judgment.

7. The defendant may appear at any time before judgment actually signed; but if he does so after the ordinary time for appearance, he or his attorney must in such case forthwith give notice to the solicitor of the department or the attorney issuing the writ, that he has appeared.

8. If defendant appears after the time for appearance and before information filed a copy of the information is to be delivered with notice to plead as before mentioned. And if defendant appears after the information has been filed, and before judgment signed, notice is to be given to him or to his attorney, at the office of the Queen's Remembrancer, of the day when the information was filed, and he may obtain an office copy thereof on payment for the same, and he must plead thereto within four days from the date of his appearance, otherwise judgment may be signed against him.

9. When a defendant appears in person the delivery of all rules, notices, and other proceedings, may be made at the address given by him on entering his appearance.

Capias.

See, generally, pp. 215, 223, and the Customs Consolidation Act, 1876, ss. 247 *seqq.*, printed pp. 723 *seqq.*

10. The writ of *capias* may be in Form 4, Schedule A., and shall be in force six calendar months from the date thereof, but the same may be renewed from time to time for a like period, at any time within the original period of six months, or within the renewed period by resealing the writ at the Queen's Remembrancer's office.

As to renewal, see note to Rule 2.

11. The appearance is to be entered, and bail piece filed in fourteen days after the execution of the writ inclusive of the day of execution.

12. If the defendant, having given bail to the sheriff, does not appear according to the exigency of the writ and also file his bail piece, judgment may be signed on filing an information (if not previously filed) and the sheriff's return, and execution may issue in fourteen days from the day of signing judgment.

The defendant has to give bail to the Crown by recognisance in Form 10 of Schedule C. (p. 797), as amended (see notes thereto), in addition to the bail to the sheriff, which is by bail bond, the condition of it being to appear and put in special bail to the Crown. See also the note to Rule 5, and the form in Schedule B., p. 786.

13. If the defendant appears in due time and files his special bail, a copy of the information must be delivered to the defendant, or his attorney, in case he appears by attorney, and notice may be given (either on the information or separately) to plead in fourteen days from the day of service of such notice, otherwise judgment. The defendant may appear and file his bail at any time before judgment actually signed, but if he does so after the ordinary time for appearing and filing his bail, he or his attorney must in such cases forthwith give notice to the solicitor of the department issuing the writ that he has done so.

14. If the defendant appears and files his bail after the time for appearance and before information filed, a copy of the information is to be delivered, with notice to plead as before mentioned; and if defendant appears and files his bail after the information has been filed, and before judgment signed, notice is to be given to him or to his attorney, at the office of the Queen's Remembrancer, of the day when the information was filed; and he may obtain an office copy thereof, on payment for the same, and he must plead thereto within four days

from the date of his appearance and filing his bail, otherwise judgment may be signed against him.

15. In any case if a defendant be in custody for want of bail he may be served with a copy of the information filed against him, personally, or by delivery of a copy of the information to the gaoler, keeper, or turnkey of the prison, and in default of such defendant appearing and pleading to such information for twenty days from the date of such service, judgment may be entered by default and execution issue forthwith.

See now sect. 249 of the Customs Consolidation Act, 1876 (p. 724).

16. In any case where a party is in gaol and is to be served with a copy of the information, the copy is to be made by the solicitor of the department, but before service the information is to be filed at the Queen's Remembrancer's office.

Provided that nothing in these Rules shall affect the right to take an assignment of the bail bond.

I.e., of the bail bond given to the sheriff. See the further provisions as to such assignment in sect. 254 of the Customs Consolidation Act, 1876 (p. 725).

17. If a defendant be arrested and gives bail to the sheriff for his appearance, before entering such appearance the defendant shall give a notice containing the names and addresses of his bail to the solicitor of the department out of which the *capias* issued, and which notice shall be left with such solicitor four clear days before application shall be made for the notice to be returned.

18. Should the bail be approved, a bail piece containing the name of defendant and his bail, with their respective addresses and occupations, is to be made out on parchment by defendant or his attorney, and, acknowledged, the leave of a judge must be obtained, if more than two names of bail are inserted in the bail piece. The bail piece, if acknowledged in town, must be before a judge or special commissioner, and after acknowledgment, filed, together with the Crown's approval of bail, in the Queen's Remembrancer's office; if acknowledged in the country, it must be before a commissioner duly authorised to take special bail in the Exchequer; in the latter case, after acknowledgment an affidavit of caption must be made, which together with the bail piece and Crown's approval of bail, must also be filed in the Queen's Remembrancer's office; and, at the time of filing his bail, defendant must also enter his appearance and give notice to the solicitor of the department that he has done so if bail not perfected, and appearance entered in due time; if the bail is refused, the parties shall be at liberty to justify before a judge, or by order of a judge before the Queen's Remembrancer, upon giving two clear days' notice of their intention to do so to the solicitor of the department who issued the writ of *capias*, or, the defendant may submit the names of other bail for the solicitor's approval.

The Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), repealing and replacing the Bails Act, 1869 (32 & 33 Vict. c. 38), provides, by sect. 1, that any commissioner for oaths may take any bail or recognisance in or for the purpose of any civil proceeding in the Supreme Court, including all proceedings on the Revenue side of the King's Bench Division,

19. If defendant requires further time for appearance or perfecting bail, the same may be obtained by summons and order of a judge.

Semble, he must give notice to the solicitor of the Department issuing the writ as under Rule 7.

20. By the order of a judge the defendant may render to the county gaol where arrested, but notice of the application must be given to the solicitor of the department; and if order made and defendant renders to such county gaol, a copy of such order must be left with the gaoler and also at the Queen's Remembrancer's office, but defendant may render to the Queen's prison as at present, on giving notice to the Queen's Remembrancer, who is to prepare a transcript of the bail, and attend with the same and original bail piece before a judge at the time of defendant rendering. If defendant only puts in bail for the purpose of rendering, the bail piece and transcript are to be prepared by the defendant, and, after acknowledgment, the bail piece is to be filed at the Queen's Remembrancer's office.

[*N.B.*—For Form of bail pieces, see Schedule C., Forms 10 and 11.]

Quære, whether sect. 247 of the Customs Consolidation Act, 1876 (p. 723), does not override this.

Intrusion.

See, generally, the article on informations of intrusion, p. 177.

21. In order to assimilate the mode of procedure in intrusion to that in ejectment and trespass on the Common Law side of the Court as nearly as may be, consistently with the rights and prerogatives of the Crown and the provisions of the statute 21 Jac. I. c. 14, the mode of procedure, to remove persons intruding upon the Queen's possession of lands or premises, shall be separate and distinct from that to recover profits or damages for intrusion.

The Act 21 Jac. I. c. 14, is set out above, p. 180.

22. In proceedings by writ of subpœna for intrusion to remove persons intruding on the Queen's possession of lands or premises, the writ may be directed to the persons intruding by name, and to all persons entitled to defend the possession of the property claimed, and the property intruded upon shall be described in the indorsement on the writ with reasonable certainty. For form of writ, see Schedule A., No. 2.

23. The writ shall command the persons to whom it is directed to appear within fourteen days after service thereof in the Court of Exchequer to defend themselves in respect of the property alleged to be intruded upon, or such part thereof as they may think fit, and it shall also contain a notice that in default of appearance they will be removed from the premises.

Appearance is now directed to be entered in the King's Bench Division of the High Court of Justice, and is entered in the King's Remembrancer's Department.

24. The writ may be served in like manner as other writs of subpœna, or in such manner as a Court or a judge shall order; and in case of there being no person actually resident upon or in the actual occupation of the property, such writ may be served by affixing a copy thereof upon the door of any dwelling house, or upon any other conspicuous part of the premises.

25. The persons named as defendants in such writ, or either of them, shall be allowed to appear within the time appointed.

26. Any other person not named in such writ shall, by leave of the Court or a judge, be allowed to appear and defend on filing an affidavit showing that he is taking the profits either by himself or his tenant of the land, &c.

27. Any person appearing to defend as landlord in respect of property whereof he alleges himself to be taking the profits only by his tenant, shall state in his appearance that he appears as landlord.

28. Any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the indorsement on the writ, describing that part with reasonable certainty in a notice intituled "In the Exchequer and Cause," and signed by the party appearing or his attorney; such notice to be served within four days after appearance upon the solicitor whose name is indorsed on the writ, and an appearance without such notice confining the defence to part shall be deemed an appearance to defend for the whole.

The notice will now be entitled "In the High Court of Justice, King's Bench Division (King's Remembrancer)," with the title of the suit.

29. No judgment for want of appearance to remove persons intruding shall be signed without first filing an affidavit of the service of the writ and a copy thereof, and the information, or, where personal service has not been effected, without first obtaining a judge's order, or a rule of Court authorising the signing such judgment, which said rule or order or a duplicate thereof, shall be filed, together with a copy of the writ and the information.

An interlocutory judgment can be entered against one or more defendants for default of appearance, where they are sued with other defendants who defend, but execution, &c. is stayed till final judgment can be given in the suit. See the form of judgment, as adapted, in Schedule B., p. 785.

30. Where a person not named in the writ of subpœna, in such cases, has obtained leave of the Court or a judge to appear and defend, he shall forthwith enter an appearance entitled in the suit, against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the solicitor of the department whose name is indorsed on back of the writ, and shall plead to the information and be subject to all the like rules of pleading and practice in respect thereof as if he had originally been named a defendant in the writ.

31. The Court or a judge may strike out or confine appearances and defences, set up by persons not taking the profit of the land, &c. by themselves or their tenants.

32. In case no appearance shall be entered within the time appointed, or if an appearance be entered, but the defence be limited to part only, the Crown shall be at liberty to proceed with respect to the undefended part of the claim, and may sign judgment and issue execution for the removal of the defendant from the land or the part whereof to which the defence does not apply, as mentioned in Rule No. 5.

See Schedule A., Form No. 10, p. 781.

33. The fact of intrusion by the defendant shall not be at issue between the parties on the trial, and in cases in which the defendant may plead the general issue under the provisions of the statute 21 Jac. I. c. 14, a plea denying the right of actual possession of the land and premises claimed to be in the Crown shall (except as to the putting in issue the fact of the intrusion) have the like force and effect as a plea of the general issue would have had before these Rules.

As to pleading the general issue under the statute, see above, p. 180.

34. If the defendant does not appear at the trial of the cause, the defendant shall be taken to have admitted the Crown's title, and the fact of the intrusion, and the verdict shall be entered for the Crown without producing any evidence, and the Crown shall have judgment for costs of suit.

35. The judgment for the Crown in cases of intrusion for the removal of persons intruding shall be a judgment of *amoveas* and *capiatur pro fine*, if a fine be sought to be recovered.

36. In case of judgment by default in intrusion, for the removal of persons intruding, either for non-appearance, or for want of pleading, no costs are to be allowed.

Intrusion for Recovery of Profits or Damages.

See generally, p. 185.

37. In proceeding by writ of subpoena for intrusion on the Queen's possessions and taking profits or for damages, the writ shall be directed to the persons intruding by name, and may be in Form 3, Schedule A.

38. To an information of intrusion for taking profits or for damages the defendant may plead the general issue of non intrusit, or not guilty, subject to the provisions of the statute 21 Jac. I. c. 14, and the judgment by default will be interlocutory, subject to the provisions of Rule 92; the final judgment for the Crown will be in either case that the Crown do recover damages and costs, with a *capiatur pro fine*, if necessary.

As to pleading the general issue under the statute, see p. 180.

Rule 92 deals with the inquiry as to damages.

Serving a Corporate Body.

39. The service of a writ of subpoena *ad respondendum*, or *scire facias*, issued from the Revenue side of this Court against a corporation aggregate, may be served in like manner as a writ of summons issued against a corporation aggregate under the sixteenth section of the Common Law Procedure Act, 1852, and the like proceedings to judgment may take place thereon as against any other party.

The matter of this Rule is now covered by sect. 36 of the Crown Suits, &c. Act, 1865 (p. 697).

Informations.

40. In all cases the information when filed is to be on parchment, and (if not filed before) is to be filed when judgment is signed, and on the information is to be indorsed the day the process issued applicable to such information by the solicitor of the department or by the attorney filing the same; but in any case,

if judgment be entered for the defendant, and the information be not filed, the copy delivered to the defendant may be filed in lieu of the original information.

The information must contain all the names of the defendants named on the subpoena, even though the action may be dropped against one or more of them, or judgment entered against one or more.

41. All informations shall be delivered or filed, as the case may be, within twelve calendar months after the service or execution of the process for the purpose for which the same issued, and, if not, the Crown shall, unless otherwise ordered by the Court or a judge, be deemed out of Court; but in any case where a defendant shall be in custody either on *capias* or attachment for not appearing, the information, if not before filed, shall be filed, and service thereof made within six weeks after defendant shall have been arrested, otherwise defendant shall be at liberty to apply to a judge for his discharge, but notice of such application must be given to the solicitor of the department issuing the writ.

See also Rule 67.

Scire Facias.

See, generally, p. 208.

The proceedings by *scire facias* may be thus:—

42. The writ of *scire facias* may be in Forms 5, 6, 7, 8 or 9, in Schedule A., as the case may be, and shall be in force six calendar months from the date thereof, but may be renewed as in cases of subpoena *ad respondendum*. The service thereof, where practicable, shall be personal, but the order of a judge may be obtained under special circumstances, on affidavit, to dispense with personal service, and to proceed as on the Common Law side of the Court upon writ of summons.

43. The appearance to be entered in fourteen days from the day of service, inclusive of the day of service.

44. If defendant appears to the writ of *scire facias* in due time, he must plead thereto within fourteen days after appearance entered, otherwise judgment.

45. If defendant does not appear according to the exigency of the writ, on filing the said writ, and an affidavit of service, or the order of the judge to proceed, judgment may be signed and execution issued in fourteen days from the day of signing such judgment.

See note to Rule 5, and the form in Schedule B., p. 786.

46. The defendant may appear at any time before judgment actually signed, but if he does so after the ordinary time for appearance, he, or his attorney, in case he appears by attorney, must in such cases give notice to the solicitor of the department issuing the writ that he has done so, and plead to the writ within four days from the date of his appearance.

47. The *scire facias* in all cases is to be filed before judgment signed.

Extents (other than those on Estreats).

See, generally, pp. 189 *sqq.*

48. The obtaining of the writ of extent or diem clausit extremum in any case shall be the same as is now in practice subject to Rule No. 1, but when an extent or diem clausit extremum is returned into the office to be filed, eight days after the same has been filed, if the return has expired, if not [*within*] eight days after the same shall have expired, the Crown, without giving a rule to claim, may proceed to realise the property mentioned in the inquisition, or recover any debt, or apply for an order for the sale of any real estate mentioned therein, or for an order to have paid to the Crown any money mentioned in the sheriff's return; but if any debt is returned as owing to the Crown's debtor, and there is danger of its being lost, an extent on an affidavit and fiat may immediately issue for its recovery without waiting such eight days.

The word "*within*" was directed to be omitted by the Rules of November, 1861, printed at p. 800.

See also the Crown Suits, &c. Act, 1865, s. 47 (p. 699).

The Queen's Remembrancer held in *R. v. Jenks* (1877), not reported, that the eight days here mentioned were eight clear days.

See p. 199, as to sale.

49. Where a claim is entered to any property, real or personal, or debts seized, under a writ of extent or diem clausit extremum, or money mentioned in the sheriff's return, notice shall be given by the claimant, or his attorney, to the solicitor of the department, and such claimant, or his attorney, may obtain a copy of the extent or diem clausit extremum and inquisition at the office (which copy may commence as in Form 1, Schedule C.), and the solicitor of the department may on such claim being entered serve a notice requiring the defendant to plead in fourteen days from the service thereof, otherwise judgment; if time should be required for pleading, the same may be granted by order of a judge.

50. The pleadings in such cases are to be delivered as in other cases.

Writs of Appraisement, Recoveries, and Writs of Delivery, also Claims on Indentures.

See, generally, pp. 175, 229.

51. After the execution of any writ of appraisement, the solicitor of the department is to file the same in the Queen's Remembrancer's office, with an indenture annexed thereto, together with an information of seizure which is to be prepared by such solicitor; and if no claim be entered for eight days after the same shall be filed, if the return of the writ of appraisement has expired (if not, eight days after the return has expired), a judgment of recovery may be entered and a writ of delivery issue for the disposal of the property mentioned in the indenture without any rule to claim.

By the Rules of 1861 (below, p. 800), no common information of seizure nor any writ of delivery need be signed by a judge.

See also Rules, 106, 107.

52. Should a claim be entered, the same shall be entered at the Queen's Remembrancer's office, on leaving a præcipe for that purpose, the claimant shall have eight days after entering such claim to make the affidavit of property and enter into a recognisance for costs (which recognisance shall be on parch-

ment and is only necessary in the Inland Revenue Department), the sureties to which shall be subject to the approval of the Solicitor of Inland Revenue, and the parties to such recognisance shall be the claimant (or his attorney), together with the sureties so approved of. After such claim shall have been entered, affidavit made, and recognisance, where necessary, filed, a copy of the information for the recovery of the property shall be delivered to the claimant, or his attorney, with a notice indorsed thereon or annexed thereto, requiring him to plead in fourteen days, otherwise judgment. If claimant pleads, the like proceedings shall take place as in other informations. The writ of appraisement, indenture, and proclamations need not form part of the record of nisi prius. If after claim entered no affidavit of property shall have been made, or recognisance, where necessary, filed, within the period above named, judgment may be signed as though there had been no claim entered.

See the provisions of the Customs Consolidation Act, 1876, ss. 264—267, and of the Inland Revenue Regulation Act, 1890, s. 25 (pp. 727, 741).

53. The affidavit of property is to be prepared in the office and copied on the indenture, but the recognisance is to be prepared by the attorney of the claimant.

[*N.B.*—For Form of Recognisance, see Schedule C., Form 12.]

Transcript of Escheats and Outlawries.

See, generally, pp. 429 *sqq.*

54. Eight days after the filing of the transcript of any writ of escheat or *capias utlagatum* with the inquisition annexed, if the return of such writ has expired, if not, eight days after such return, the Crown or prosecutor, as the case may be, shall be at liberty to realize the value of the goods and chattels, or to issue a writ of *levari facias*, to levy the rents, or a writ of *scire facias* for the recovery of any debt, or such other writ as may be applicable to the premises mentioned in such transcript, but such transcript need not be enrolled; in case of outlawries, the present practice as to petitioning the Lords of the Treasury to authorise the Attorney-General to consent that the money received by the sheriff, under any writ where the same exceeds fifty pounds, may be paid to the prosecutor, and the application to the Court, or a judge, for that purpose shall continue as heretofore.

55. Where a claim shall be entered to any property seized under a writ of escheat or *capias utlagatum*, and the transcript is filed in the Queen's Remembrancer's office, the claimant, or his attorney, is to give notice to the solicitor for the Crown or to the attorney, for the prosecutor of such claim being entered, and thereupon the claimant, or his attorney, may obtain from the office a copy of the transcript, or so much thereof as shall be necessary, and which copy may commence in Form (2) in the Schedule (C.) hereunto annexed, and upon such claim being entered the solicitor for the Crown or attorney for the prosecutor may deliver to the defendant (claimant) or his attorney a notice requiring him to plead in fourteen days from the service of such notice, otherwise judgment; but if time to plead be required, the same may be granted by order of a judge.

56. Subsequent pleadings to be delivered as in other cases.

57. If defendant outlawed be a beneficed clergyman, a sequestration may issue on an order obtained for that purpose, as is at present the practice.

Time for Pleading, &c.

See, generally, pp. 227, 231.

58. The plea and subsequent pleadings in all cases are to be delivered between the respective parties.

59. Unless otherwise ordered by the Court or a judge, the time for pleading shall be fourteen days from the service of the notice to plead, and a notice requiring the defendant to plead in fourteen days, otherwise judgment may be indorsed on the information or other proceeding required to be pleaded to or delivered separately; and the time for replying and pleading all subsequent pleadings shall be fourteen days from the service of the notice to reply, &c., and a like notice to that effect may be indorsed on the pleading or delivered separately, but time may be obtained by order of a judge. On default, after such notice, judgment may be signed.

60. If the opposite party doth not appear on a summons for time, and consent to or oppose the summons, the party applying for time may obtain a subsequent rule or rules for any time not exceeding three weeks on each rule from the Queen's Remembrancer's office, to be dated the day it is issued; and such rule may from time to time be issued to either party, unless a two days' notice is given to the opposite party that the application for further time is objected to, and in such case the application for further time must be made to the Court or a judge.

If the opposite party appears, further time cannot be obtained from the King's Remembrancer's Office.

61. The pleadings and proceedings in revenue may be had and taken throughout the year, without reference to any seal day, provided that, in all cases in which any particular number of days not expressed to be clear days is prescribed by the rules or practice of the Court, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

See now Ord. LXIV., applied by Ord. LXVII. r. 2, especially Ord. LXIV. rr. 2, 3, 12. See also p. 231.

62. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in any rules, notices, or other proceedings, except notices of trial. Informations may be delivered or served on any day except Sundays, Christmas Day, or Good Friday, or any day appointed for a public fast or thanksgiving.

See note to Rule 61.

63. In case the time for pleading to any information, or for answering any pleadings, shall not have expired before the 10th day of August in any year, the party called upon to plead, reply, &c. shall have the same number of days for that purpose, after the 24th day of October, as if the information or preceding pleading had been delivered or filed on the 24th October. This rule is

not to apply when a defendant is in gaol under a *capias* for penalties, or under an attachment, and is afterwards served with copy of the information.

See note to Rule 61, and contrast Ord. LXIV. rr. 4, 5.

64. Every information and other pleading shall be entitled "in the Exchequer," and of the day, month, and year when the same was filed or delivered, as the case may be, and shall bear no other time or date, and every information and other pleading shall also be entered on the record made up for trial (and on the judgment roll if necessary) under the date of the day, month, and year when the same respectively took place and without reference to any other time or date, unless otherwise ordered by the Court or a judge.

The title now is "In the High Court of Justice, King's Bench Division (King's Remembrancer)."

65. In all cases of claim under extent or transcript of escheat or outlawry or appearance to *scire facias*, the proceedings may commence in the words set forth in the Schedule C., Forms 1, 2 and 3, hereto annexed, under their respective heads, or as near thereto as may be.

66. No entry of continuances by way of imparlance, *curia advisare vult*, *vicescomes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings.

67. If no proceeding has been had for one year from the last proceeding had the party who desires to proceed shall give a calendar month's notice to the other of his intention to proceed; a summons of a judge, if no order be made thereupon, shall not be deemed a proceeding within this Rule, a rule for time to plead, &c., and a notice of trial, although afterwards countermanded, shall be deemed a proceeding.

See also Rule 41.

Recognisances.

See, generally, p. 229.

68. All recognisances, if taken and acknowledged in town, are to be taken and acknowledged before a judge; and if a recognisance be taken and acknowledged in the country, the same may be taken and acknowledged before a commissioner for taking special bail in the Exchequer, and in the latter case an affidavit of caption must be made and filed.

See note to Rule 18.

69. No commission in future need issue for taking recognisance or bail in the country, provided, that where necessary, in the case of a bond given by a public officer, such commission may issue as heretofore.

70. Where a recognisance is ordered by the Privy Council to be entered into, the same, after the acknowledgment thereof, is to be filed in the Queen's Remembrancer's office; and thereupon the Queen's Remembrancer is to grant a certificate of such recognisance being filed.

71. No enrolment of any recognisances shall be necessary, but the same are to be filed in the office

72. All recognisances and bails are to be prepared on parchment by the respective parties entering into the same, excepting when, in the case of a bond by a public officer, the Queen's Remembrancer shall be directed by the Treasury to prepare the same.

[N.B.—For Forms of Recognisances, see Schedule C., Forms 12 and 13.]

Issue.

73. No copy issue need be delivered, and the record of nisi prius in all cases is to be made up and entered with the associate by the solicitor of the Crown, but need not be sealed.

[N.B.—See Forms of Nisi Prius Record, Schedule C., Forms 1, 2, 3 and 4.]

That is to say, no copy of the whole pleadings (as between party and party) need be delivered to the defendant.

Notice of Trial and Countermand.

74. The notice of trial shall be ten days in all cases and countermand of notice of trial four days before the time mentioned in the notice of trial, unless short notice of trial has been given, when two days shall be sufficient.

The associate in all cases at nisi prius is to take the verdict.

Jury Process, Juries, and View.

See, generally, pp. 224, 232.

75. That sections 104 to 115, both inclusive, of the Common Law Procedure Act, 1852, together with the Rules 44 to 49, both inclusive, of Hilary Term, 1853, where applicable, shall extend and be adapted and applied to suits on the Revenue side of the Court.

The sections referred to are printed above, p. 665, the Rules, p. 751.

As to Admission of Documents.

See, generally, p. 220.

76. The several provisions and enactments of the sections 117, 118 and 119 of the Common Law Procedure Act, 1852, together with Rules 29 and 30, of Hilary Term, 1853, shall, so far as they may be applicable, extend and apply to cases on the Revenue side of the Court.

The sections referred to are printed above, p. 667, the Rules, p. 750.

77. No subpoena for the production of an original record shall be issued unless a rule of Court or the order of a judge shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document in such rule or order.

78. All depositions of witnesses taken under the order of a judge, rule of Court, or writ of commission shall be returned to and filed in the Queen's Remembrancer's office.

Withdrawal of Plea and Confession.

79. A defendant may, at any time before trial, withdraw his plea, by delivering such withdrawal to the solicitor of the department, after which the

Crown may immediately enter judgment, and issue process thereupon. When the Crown signs judgment, in addition to filing the information, the withdrawal of the plea must also be filed.

80. Where defendant confesses the information or scire facias, such confession, as well as the information or scire facias, is to be filed at the time of signing judgment.

Costs.

See, generally, pp. 216, 618, and Ord. LXV., applied by Ord. LXVIII. r. 2.

81. One day's notice of taxing costs, together with a copy of the bill of costs, and affidavit of increase (if any), shall be given to the solicitor of the department or attorney of the party whose costs are to be taxed by the other party or his attorney, in all cases where a notice to tax is necessary.

82. One appointment only shall be deemed necessary for proceeding in the taxation of costs.

83. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person or by attorney.

84. The costs of the day for not proceeding to trial may be obtained by a side bar rule on affidavit.

85. When issues in law and fact are raised, the costs of the several issues, both in law and fact, will follow the judgment or finding, and if the party entitled to the general costs of the cause obtains a verdict on any material issue, he will also be entitled to the general costs of the trial, but if no material issue in fact be found for the party otherwise entitled to the general costs of the cause, the costs of the trial shall be allowed to the opposite party.

86. On all rules and orders of the Court or judge, where costs are directed to be paid to the Crown, a certificate shall be granted by the Queen's Remembrancer of the costs allowed, and on default of payment the solicitor of the department may sue out a subpoena for the payment of such costs, and on an affidavit of service thereof, and demand made and non-payment, a fiat for an attachment may be granted.

Such costs are now taxed in the Taxing Department of the Central Office.

Judgments.

See, generally, p. 223.

87. Judgments may be signed either in term or vacation, and shall be entered of the day, month, and year (whether in term or vacation,) when signed, and shall not have relation to any other day, but it shall be competent for the Court or a judge to order a judgment to be entered *nunc pro tunc*.

88. All judgments after trials at *nisi prius* or at bar may be signed and execution issued thereon in fourteen days, and in cases of claim such writ or order as may be applicable may also issue in the like period, unless the judge or Court who tried the cause, or some other judge or the Court, shall order execution to issue against the defendant, or, in case of claim such writ or order as aforesaid, at an earlier or later period with or without terms.

See the similar terms of the Customs Consolidation Act, 1876, s. 219 (p. 717), applying to execution on verdict under the Customs Acts. Compare also the note to Rule 5.

89. It shall not be necessary before issuing execution on any judgment whatever, to enter the proceedings on the roll, but a judgment adapted to the

particular case, according to the forms in Schedule B., is to be filed on parchment in the Queen's Remembrancer's office, by the party entitled to the same, and shortly entered in the judgment book, except in cases when the judgment roll is required by the party, or ordered by a judge to be carried in, when a complete copy of the proceedings must be filed in the Queen's Remembrancer's office, for the purpose of being enrolled therein, and the same shall be enrolled by the proper officer.

90. On default of pleading after appearance, judgment may be signed and execution issue forthwith.

91. In cases of error, where the proceedings are to be enrolled, the copy of such proceedings shall be filed at the Queen's Remembrancer's office, by plaintiff in error, within six days after delivering to the Queen's Remembrancer the memorandum alleging that there is error.

See the note on p. 768.

[N.B.—For introductory words of a judgment after verdict when the roll is carried in, see Form 5, Schedule C.]

Writ of Inquiry in respect of Profits or Unliquidated Damages.

See p. 217.

92. When the claim of the Crown is in respect of profits or unliquidated damages, and the Crown is entitled to sign judgment by default, either for non-appearance or otherwise, the judgment (except as hereinafter mentioned) shall be interlocutory, and thereupon a writ of inquiry in Form No. 13, Schedule A., may issue to assess the profits or damages as on the Common Law side of the Court, and ten days' notice of the inquiry shall be given to the defendant's attorney, if he has appeared by attorney, or to the defendant, if otherwise; but final judgment shall not be signed until four days after the writ of inquiry and inquisition has been filed if the return of the writ is past, if not, four days after such return shall have taken place; provided that in such cases where the Crown elect to apply to the Court to impose a fine, the judgment may be final, as heretofore.

Writ of Execution.

Every writ of execution for possession must be endorsed by the Attorney-General.

In *A.-G. v. Laurie*, not reported, the Queen's Remembrancer initialled a præcipe for another writ after reading an affidavit of diligent search, where the writ of execution had been lost before execution.

Where lands, &c. are to be seized in execution, the Crown can have an extent on judgment as of right. In fact, the Crown is entitled to an extent on judgment at its own option without any other formality than the præcipe for the writ. See pp. 142, 189.

93. Upon any judgment in intrusion for the removal of persons intruding on the Queen's possession of lands or premises and for costs, there may be either one writ or separate writs of execution for such removal, and for the costs, at the election of the Attorney-General, and the form of the writ or writs for such purposes may be in Form 10, in Schedule A., hereto annexed.

94. No writ of execution shall be issued until judgment has been signed.

95. Every writ of execution for the recovery of any debt, penalty, or sum of money shall be indorsed with a direction to the sheriff or other officer or person to whom the writ is directed, to levy only the money really due and payable, and sought to be recovered under the judgment.

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96. After judgment for the Crown upon any claim, a writ of execution may issue for the costs, in addition to the writ applicable to the property relating to such claim.

Proceedings in Error.

The Rules relating to proceedings in error are now obsolete, owing to the application of Ord. LVIII., relating to appeals, by Ord. LXVIII. r. 2. See further above, p. 214.

97. Either party alleging error in *law* may deliver to the Queen's Remembrancer a memorandum in writing, in the form contained in the Schedule (C.) to these rules annexed, Form [6], or to the like effect entitled "In the Exchequer and Suit," and signed by the party or his attorney, alleging that there is error in law and in the record and proceedings, whereupon the Queen's Remembrancer shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note, together with a statement of the grounds of error intended to be argued, may be served on the solicitor of the department or attorney in the cause, as the case may be. Proceedings in error in law shall be deemed as supersedeas of execution from the time of the service of the copy of such note, together with the statement of the grounds of error agreed to be argued, until default in putting in bail or an affirmation of the judgment, or discontinuance of the proceedings in error or until the proceedings in error shall be otherwise disposed of without a reversal of the judgment; provided always, that if the grounds of error shall appear to be frivolous, the Court or a judge upon summons may order execution to issue.

98. Upon any judgment hereafter to be given for the Crown on the Revenue side of the Court in any suit, including intrusion, except on special verdict, special case, or bill of exceptions, execution shall not be stayed or delayed by proceedings in error or supersedeas thereupon, without the special order of the Court, or a judge, or consent of Attorney-General, unless the person in whose name such proceedings in error be brought be bound with two, or, by leave of the Court or a judge, more than two, sufficient sureties, shall within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto Her Majesty, her heirs or successors, by recognisance of bail, to be acknowledged in this Court, in double the sum adjudged to be recovered by the said judgment (except in case of a penalty, and in case of a penalty in double the sum really due, and double the costs, and in cases of intrusion, double the yearly value of the property and double the costs recovered by the judgment), to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein), all and singular the sum or sums of money and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution; provided always, that the Court or a judge may direct any other form of security to be given, and to such amount as may seem to the Court or a judge sufficient, or may order money to be paid into Court in such manner and to such amount as may be deemed sufficient.

99. The assignment of and joinder in error in law shall not be necessary or used, and instead thereof a suggestion to the effect that error is alleged by the one party and denied by the other, may be entered on the judgment roll, in the

form contained in Schedule (C.) to these Rules annexed, Form (7), or to the like effect.

100. The roll shall be made up and the suggestion last aforesaid entered by the plaintiff in error within ten days after the service of the note of the receipt of the memorandum alleging error, or within such other time as the Court or a judge may order; and in default of such suggestion, the defendant in error shall be at liberty to sign judgment of non pros.

101. The several provisions contained in the 154th, 155th, 156th, and 157th sections of the Common Law Procedure Act, 1852, where applicable, shall extend and be applied in like cases on the Revenue side of the Court.

102. Either party alleging error in *fact* may deliver to the Queen's Remembrancer a memorandum in writing, in the form contained in the Schedule (C.) to these Rules annexed, Form (8), or to the like effect, intituled "In the Exchequer and Suit," and signed by the party or his attorney, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists; whereupon the Queen's Remembrancer shall file such memorandum and affidavit, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note and affidavit may be served on the opposite party or his attorney; and such service shall have the same effect, and the same proceedings may be had thereafter as heretofore had after the service of the rule for allowance of a writ of error in fact.

103. The several enactments and provisoes contained in the Common Law Procedure Act, 1852, ss. 159—166, both inclusive, shall, so far as the same are applicable, extend and be applied to like proceedings in error on the Revenue side of the Court.

104. The sureties in cases of bail in error are to be approved of by the solicitor of the department, in like manner as on a *capias*, but if the bail piece cannot be completed in four days, as mentioned in Rule 98, further time may be applied for to a judge.

105. After suggestion in error has been entered on the roll, either party may set the cause down with the Queen's Remembrancer four clear days before the day appointed for arguing errors from the Exchequer; and four clear days before such day of argument the plaintiff in error must deliver paper books to the judges of the Court of Queen's Bench, and the defendant in error must deliver paper books to the judges of the Court of Common Pleas. Whoever sets down the cause must give immediate notice to the other party that he has done so.

Claims.

See also Rules 51—57 and notes thereto and p. 201.

106. All claims under extents, *diem clausit extremum*, indentures of appraisement, or transcripts of writs and inquisitions, shall be entered on the respective records, and also in the claim book. If part only of property be claimed, the unclaimed part thereof may be dealt with in the same manner as if there had been no claim.

107. Claim may be entered at any time before process issued, or order obtained for realising the property returned into Court.

New Trials.

See, generally, p. 225.

108. In every rule nisi for a new trial, or to enter a verdict or nonsuit, the grounds upon which such rule shall have been granted shall be shortly stated therein.

109. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second.

Pleading to Estreated Recognisances.

See p. 229.

110. When application is to be made to the Court or a judge by any party seeking to be relieved from his estreated recognisance, the same may be made on petition to the Court or a judge, or by motion founded on a constat of such estreat, to be obtained from the office, and supported by such affidavits as the party may deem necessary. A copy of the petition or notice of the motion must be served on the Solicitor of the Treasury four days before the hearing of the same.

111. If a party to an estreated recognisance intends to plead thereto, he must obtain a constat of the recognisance at the office, and enter an appearance thereto, and plead to such estreat within fourteen days from the day of entering the appearance, and deliver such plea to the Solicitor of the Treasury, and the proceedings may be carried on as in other cases.

Execution on Estreats.

112. In cases of process issuing for the recovery of any fines, issues, amerciaments, penalties, and recognisances estreated, the writ to be first used may be as set out in Form 11, Schedule A., but the long writ heretofore in use may be issued when necessary or required as a second or subsequent writ.

Rules to return Writs or bring in the Body.

113. The rules numbered 130 and 134, both inclusive, of the General Rules of Hilary Term, 1853, as to returning writs or bringing in the body, &c. where applicable, shall extend to, be adapted, and applied to the Revenue side of the Court.

This rule is superseded by Ord. LII. r. 11, applied by Ord. LXVIII. r. 2.

Rules and Orders.

By the Rules of 1861, below, p. 800, in any suit or proceeding on the Revenue side of the Court all rules at side bar and motions of course bear date on the day they are drawn up.

114. The writ heretofore used calling upon a party to perform a rule or order shall not be necessary or used to bring such party into contempt; but the serving of a copy of the rule or order under the seal of the office, or the copy of an office copy of such rule or order, shall be sufficient to ground an application for an attachment or other writ, as the case may be.

115. No rule to appear, plead, deliver subsequent pleadings, claim, or for concilium, or judgment, shall be necessary.

116. It shall not be necessary to the regular service of a rule or order that the original or office copy thereof should be shown, unless sight thereof be demanded, except in cases of attachment.

117. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be made before seven o'clock p.m.; if made after that hour the service shall be deemed as made on the following day; but on Saturday the service must be made before two o'clock p.m., otherwise to be deemed as made on Monday.

See now Ord. LXIV. r. 11, applied by Ord. LXVIII. r. 2, and the remarks on p. 231.

Affidavits.

See, generally, p. 213, and Ord. XXXVIII., applied by Ord. LXVIII. r. 2.

118. Every affidavit in any suit or proceeding on the Revenue side of the Court shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit, or part of an affidavit, substantially departing from this Rule.

See now Ord. XXXVIII. r. 7.

119. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be made use of in Court, or before the Queen's Remembrancer, unless by leave of the Court or a judge.

Compare Ord. XXXVIII. r. 18.

120. No rule which the Court has granted upon the foundation of any affidavit shall be of any force unless such affidavit shall have been actually made before such rule was moved for, and produced in Court at the time of making the motion.

121. All affidavits in Revenue matters used before a judge out of Court shall be filed with the Queen's Remembrancer, and such affidavits shall forthwith be delivered to the Queen's Remembrancer, in order to be filed.

This Rule apparently applies in preference to Ord. XXXVIII. r. 10.

122. No party shall be required to take an office copy of his own affidavit, or be permitted to inspect or take an office copy of any affidavit for a *capias* to hold to bail, except by order of the Court or a judge.

Satisfaction Warrant and Nolle Prosequi.

123. The form of the satisfaction warrant may be in Form 9, Schedule C., in the schedule hereto annexed, or as near thereto as the case may admit of; the same shall be engrossed on parchment and indorsed by the solicitor of the department from whence the proceedings emanated, afterwards signed by the Attorney-General, and then filed in the Queen's Remembrancer's office. The *nolle prosequi* may be in Form 14, Schedule C., the same must be engrossed on parchment, and, after being signed by the Attorney-General, filed in the Queen's Remembrancer's office.

See p. 218.

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Land Tax Act, 1 & 2 Vict. cap. 58.

124. In any application to the Court under this Act, where the Crown is not a party, the order is to be drawn up, and the proceedings are to take place, on the plea side of the Court.

See p. 188.

Warrants of Nisi Prius and Tales.

125. The record of nisi prius may be made up without any warrant of nisi prius being obtained, and tales may be prayed on behalf of the Crown, without any warrant for that purpose.

See p. 224.

Letters Patent appointing Commissioners of Customs and Writs of Assistance.

126. Letters patent appointing the Commissioners of Customs are to be enrolled in the Queen's Remembrancer's office, but the writ of assistance is to be prepared and issued in the same manner as other writs.

Writs of Summons for Recovery of Legacy or Succession Duty.

127. A full præcipe of the names of all the parties in these cases shall be sufficient without leaving a full copy of the writ; such writ shall be in force six calendar months, but may be renewed by resealing as a subpoena ad respondendum.

[N.B.—For form of writ, see Schedule A., No. 12.]

See p. 186.

Special Cases from Magistrates or Quarter Sessions; also Special Cases under the Stamp Act.

128. The above special cases are to be filed as at present, but not enrolled, unless the enrolment be necessary after giving judgment, when the same is to be prepared in the Queen's Remembrancer's office.

No enrolment is now necessary; see Ord. LXI. r. 8, which applies to the whole of the Central Office including the King's Remembrancer's Department. The King's Remembrancer's Department has now nothing to do with special cases from magistrates or quarter sessions.

Writs of Levari Facias against Defaulters and Collectors.

129. When writs against either of the above parties are brought to the office to be sealed, there shall at the same time be filed the certificate of the receiving officer or other party, together with the affidavit and fiat for process to issue.

Trials at Bar.

130. Where any trial at bar is to take place, in addition to the respective pleadings being delivered between the parties, each party is to file a copy of his pleadings at the Queen's Remembrancer's office for the purpose of being enrolled. The trial is to take place on the roll.

See the general discussion of trials at bar, p. 587.

Exemplification of Records.

131. Any matter required to be exemplified shall be enrolled in the Queen's Remembrancer's office, and the exemplification prepared therein, as at present.

See p. 222.

Payment of Money into Court, &c.

132. The party wishing to pay money into Court, either under Act of Parliament or by order of Court or a judge, must apply at the office of the Queen's Remembrancer for a "Direction" to do so, which direction must be taken to the Bank of England, and the money there paid in; after payment the receipt obtained from the Bank of England must be filed at the Queen's Remembrancer's office.

Such money is now placed to the account of the Paymaster-General.

133. If the money is to be invested, paid out, or otherwise disposed of, an order of the Court or a judge must be obtained for that purpose, upon notice to the opposite party.

134. The orders relating to the above matters are to be drawn up in the Queen's Remembrancer's office.

Setting down Special Verdicts, Petitions, Demurrers, &c. for Argument before the Court.

See now Ord. XXXIV., applied by Ord. LXVIII. r. 2, and p. 230.

135. All special verdicts, special cases, demurrers and petitions shall be set down for argument at the Queen's Remembrancer's office, four clear days before the day on which the same are to be argued, and notice given forthwith to the other party.

136. Four clear days before the day of argument two copies of the special verdict, special case, demurrer, or petition, with the points to be insisted on, are to be delivered by the solicitor of the department or other attorney to the Lord Chief Baron and Senior Baron of the Court, and two other copies of such document are to be delivered by the opposite party to the Barons next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default, and the Court may make such order as to the hearing such argument and as to costs or otherwise as they may think fit.

137. When there shall be a demurrer to part only of the information (or pleading) or other subsequent pleadings, those parts only of the information (or pleading) and pleadings to which such demurrer relates, shall be copied into the demurrer books.

Miscellaneous.

138. The Queen's Remembrancer's offices shall be open in term time from eleven o'clock in the forenoon till four o'clock in the afternoon, and not in the evening, and in the vacation from eleven o'clock in the forenoon till three o'clock in the afternoon, except between the 10th day of August and the 24th day of October, when they are to be open from eleven in the morning till two in the afternoon, and, except on Good Friday, Easter Eve, Monday and Tuesday in Easter Week, Christmas Day, and the three following days, and such of the

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four following days as may not fall in the time of term, but not otherwise, viz., the Queen's birthday, the Queen's accession, Whit Monday, and Whit Tuesday, when the offices shall be closed.

See p. 225. This Rule is now superseded by Ord. LXIII. rr. 6, 9.

139. On every appointment made by the Queen's Remembrancer the party on whom the same shall be served shall attend without waiting for a second appointment, or in default thereof, the Queen's Remembrancer may proceed *ex parte* on the first appointment.

140. These Rules, so far as the same may be applicable, shall be deemed and taken to extend to suits and proceedings at the instance of the Attorney-General of His Royal Highness the Prince of Wales or the Duke of Cornwall for the time being.

See p. 226.

141. All writs shall conclude with the date of the day, month, and year, without any other concluding words.

142. Excepting where at variance with these Rules, or otherwise directed by the Court or a judge, the present course of practice shall be pursued.

143. These Rules shall not be deemed to apply to suits in equity.

For the Rules governing suits in Equity, see pp. 805, 808.

144. Writs into counties palatine may be directed to the sheriffs of those counties respectively.

This Rule corresponds to sect. 25 of the Crown Suits, &c. Act, 1865 (p. 625), repealed by the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 39 and Sched. II. The latter Act, by sect. 31, extends to the Counties Palatine, and this Rule may, therefore, be regarded as obsolete.

145. Where any deed or other instrument is directed by statute to be enrolled in the Court of Exchequer, the same may be enrolled without obtaining a fiat for that purpose, and shall be enrolled of the day, month, and year when the same was delivered at the Queen's Remembrancer's office, with such introductory words as may be necessary.

See, now, Ord. LXI. r. 9, which applies to the whole Central Office, including the King's Remembrancer's Department.

146. That the foregoing Rules shall come into operation and take effect on Wednesday, the 24th of October, A.D. 1860, and with respect to any matter or proceeding then pending these Rules may (so far as they are applicable to any step or proceeding to be thereafter taken) be adopted and applied accordingly.

Fred. Pollock.
Samuel Martin.
G. Bramwell.
W. F. Channell.
James Wilde.

22nd June, 1860.

SCHEDULES.

Forms of Writs, Proceedings, &c.

The forms contained in the following schedules may be used in the cases to which they are applicable, with such alterations as the nature of the suit, the character of the parties, or the circumstances of the case may render necessary; but any variance therefrom, not being in matter of substance, shall not affect their validity or regularity.

SCHEDULE A.

The author has not thought it proper to alter in detail the formal parts of the precedents in this Schedule. They must be made to correspond with those of the precedent of the writ of subpœna, printed above, p. 260.

FORM 1.

Form of Subpœna.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To greeting. We command and strictly enjoin you, that within fourteen days from the service of this writ inclusive of the day of such service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster to answer Us concerning certain articles then and there on Our behalf to be objected against you; and take notice, that in default of your so doing, We shall proceed thereon to judgment and execution.

Witness , at Westminster, the day of , in the year of our Lord one thousand eight hundred and .

(Indorsement.)

At the suit of Her Majesty's Attorney-General (*or, as the case may be*).

By information.

This writ is issued against you by A. B. the solicitors of (*as the case may be*),

(*if for penalties*)

for the forfeiture by you of £ for penalties under the statutes relating to the revenue of Customs (*Excise, Stamps, Taxes, &c., or as the case may be*).

(*or, if for duties or a debt*)

for the recovery of £ for duties due from you under the statutes relating [*&c. as before—or state shortly the nature of the debt*].

Take notice, that in default of your entering an appearance in Our Court of Exchequer, according to the exigency of this writ, an information may be filed and judgment signed thereon, and execution issued on such judgment, together with costs at the expiration of fourteen days from the day of signing such judgment.

FORM 2.

Form of Subpœna for Intrusion for the Removal of Persons intruding.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To and to all persons entitled to

defend the possession of the property, described in the indorsement on this writ, greeting We command and strictly enjoin you, that within fourteen days from the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster, to answer Us concerning certain articles then and there on Our behalf to be objected against you, and to defend yourself from being removed from the property described in the indorsement on this writ, and take notice, that in default of your so doing, We shall proceed thereon to judgment and execution.

Witness , at Westminster, the day of , in the year of our Lord one thousand eight hundred and .

(Indorsement.)

At the suit of Her Majesty's Attorney-General (*or, as the case may be*).

By information.

This writ is issued against you by A. B., the solicitor of (*as the case may be*) for the recovery of certain lands, messuages, and premises situate in the parish of , in the county of

(describing the property with reasonable certainty).

Take notice, that in default of your entering an appearance in Our Court of Exchequer, according to the exigency of this writ, an information may be filed and judgment signed thereon, and execution issued on such judgment at the expiration of fourteen days from the day of signing such judgment, and you will be turned out of possession.

FORM 3.

Form of Subpœna for Intrusion for Profits or for Damages.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To greeting. We command and strictly enjoin you, that within fourteen days from the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster, to answer Us concerning certain articles then and there on Our behalf to be objected against you; and take notice, that in default of your so doing, We shall proceed thereon to judgment.

Witness , at Westminster, the day of , in the year of our Lord one thousand eight hundred and .

(Indorsement.)

At the suit of Her Majesty's Attorney-General (*or, as the case may be*).

By information.

This writ is issued against you by A. B., the solicitor of (*as the case may be*) [*if for the recovery of profits*] for the recovery from you of the profits of certain lands, messuages, and premises, situate in the parish of , in the county of

(describing the property with reasonable certainty).

[*or, if for damages*] for certain entries, intrusions, and trespasses committed by you on certain lands, messuages, and premises, situate in the parish of , in the county of

(describing the property as before) [or, as the case may be].

Take notice, that in default of your entering an appearance in Our Court of Exchequer, according to the exigency of this writ, an information may be filed and judgment signed thereon.

FORM 4.

Form of Capias.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Sheriff of the county of greeting. We command you, that you do not omit by reason of any liberty of your bailiwick, but enter the same, and take C. D. by his body wherever you find him in your bailiwick, and that you keep him safely and securely until he shall have given you bail, * or until the said C. D. shall by other lawful means be discharged from your custody. And We do further command you, that, on execution hereof, you do deliver a copy of this writ to the said C. D. And We do hereby require the said C. D. to take notice that within fourteen days after execution hereof on him, inclusive of the day of such execution, he shall cause an appearance to be entered for him in Our Court of Exchequer at Westminster, to answer Us touching certain articles to be exhibited against him before Our said Barons by Our Attorney-General, and shall within the same time cause special bail to be put in for him to the said suit; and that, in default of so doing, such proceedings may be had and taken as are mentioned in the warning written or indorsed hereon. And We do further command you, that, immediately after the execution hereof you do return this writ to Our said Court of Exchequer, together with the manner in which you have executed the same, and the day of execution thereof, or, if the same shall remain unexecuted, then that you do so return the same at the expiration of six calendar months from the date hereof, or sooner, if you shall be thereto required by order of the said Court, or by any judge thereof.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

(Indorsement.)

This writ is issued against the said C. D. by A. B., the solicitor of (*as the case may be*).

(if for penalties)

for the forfeiture by the said C. D. of £ for penalties under the statutes relating to the revenue of Customs (*Excise, Stamps, Taxes, &c., or as the case may be*).

(or, if for duties or a debt)

for the recovery of £ for duties due from the said C. D. under the statutes relating (&c. *as before—or state shortly the nature of the debt*).

A Warning to the Defendant.

If a defendant, having given bail on the arrest, shall omit to enter an appearance, and put in special bail, as within required, the Crown may proceed against the sheriff, or on the bail bond, and may file an information against you, and sign judgment thereon, and issue execution on such judgment, together with costs, at the expiration of fourteen days from the day of signing such judgment.

Bail for £ .

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Capias Detainer.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the of greeting. We command you, that you keep and detain the body of now a prisoner in Our prison, under your custody, safely and securely until he shall have given you bail [*as in preceding form from the asterisk (*)*].

Consider in connection with this form the provisions of sect. 247 of the Customs Consolidation Act, 1876, p. 723.

FORM 5.

Form of Scire Facias on Bond to the Queen.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B. of in the county of greeting. Whereas you the said A. B., by bond or writing obligatory, sealed with your seal, made at Westminster, in the county of Middlesex, dated the day of in the year of our Lord one thousand eight hundred and became bound to Us in the sum of of lawful money of Great Britain, payable at a day past, which said sum of money you have not yet paid or caused to be paid to Us as We are informed. And We, being desirous to be satisfied the same with all the speed We can (as is just) do command you, that within fourteen days from the service of this writ, including the day of service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster; and take notice, that in default of your so doing judgment will be signed against you forthwith, and execution issued at the expiration of fourteen days from the day of signing such judgment for the said sum of together with costs.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

Take notice, that if you appear in due time according to the exigency of this writ, you are required to plead thereto in fourteen days from the date of such appearance, including the day of such appearance, and in default judgment may be signed and execution issued forthwith. The plea must be delivered to the solicitor of the department issuing out this writ.

FORM 6.

Form of Scire Facias on Bail Bond.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B. of in the county of greeting. Whereas you the said A. B., by bond or writing obligatory, sealed with your seal, made at Westminster, in the county of Middlesex, dated the day of in the year of our Lord one thousand eight hundred and became held and firmly bound to sheriff of the said county of in the sum of of good and lawful money of Great Britain, to be paid to the said sheriff at a day past. And whereas, by a certain assignment of the said bond, the said sheriff, at Our request, costs, and charges, hath assigned unto Us for Our use the said bond or writing obligatory; and which said sum of still remains due and unpaid to Us. And We, being desirous to be satisfied the same with all the speed We can (as is just), do command you, that

within fourteen days from the service of this writ, including the day of service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster; and take notice, that in default of your so doing judgment will be signed against you forthwith, and execution issued at the expiration of fourteen days from the day of signing such judgment for the said sum of together with costs.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

Take notice, that if you appear in due time, according to the exigency of this writ, you are required to plead thereto within fourteen days from the date of such appearance, including the day of such appearance, and in default judgment may be signed and execution issued forthwith. The plea must be delivered to the solicitor of the department issuing out this writ.

FORM 7.

Form of Scire Facias on Special Bail or Recognisance.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B. of in the county of greeting. Whereas you the said A. B., came in your proper person before [here state before whom the acknowledgment took place] on the day of in the year of our Lord one thousand eight hundred and , and acknowledged yourself to be indebted to Us in the sum of of lawful money of Great Britain, to be paid at a day now past, which said sum of money you have not yet paid or caused to be paid to Us, as We are informed. And We, being desirous to be satisfied the same with all the speed We can (as is just), do command you, that within fourteen days from the service of this writ, including the day of service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster; and take notice, that in default of your so doing judgment will be signed against you forthwith, and execution issued at the expiration of fourteen days from the day of signing such judgment for the said sum of together with costs.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

Take notice, that if you appear in due time, according to the exigency of this writ, you are required to plead thereto within fourteen days from the date of such appearance, including the day of such appearance, and in default judgment may be signed and execution issued forthwith. The plea must be delivered to the solicitor of the department issuing out this writ.

FORM 8.

Form of Scire Facias on Inquisition held under Writ of Extent or Diem Clausit Extremum.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B., of in the county of greeting. Whereas [here recite the substance of the writ of extent or diem clausit extremum]: And whereas by an [or another] inquisition indented, taken at on the day of before the sheriff of the said county, by virtue of Our writ of extent [or, diem clausit extremum], issued out and under the seal of Our Court of Exchequer at Westminster, against the said , his estate

and effects [*or, the estate and effects of the said*], for the recovery of the said debt, it was found on the oath of and others, good and lawful men of the said sheriff's bailiwick, that you the said A. B. were indebted [*as in inquisition*], which said debt the said sheriff, on the day of taking the said inquisition, had seized and taken into Our hands according to the command of the said writ, and the same still remains due and unpaid to Us, as We are informed, as by the said writ of extent [*or, diem clausit extremum*] and inquisition taken thereupon, returned and filed in Our said Exchequer, more fully appears. And We, being desirous to be satisfied the same with all the speed We can (as is just), do command you, that within fourteen days from the service of this writ, including the day of service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster; and take notice, that in default of your so doing judgment will be signed against you forthwith, and execution issued at the expiration of fourteen days from the day of signing such judgment for the said sum of together with costs.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

Take notice, that if you appear in due time, according to the exigency of this writ, you are required to plead thereto within fourteen days from the date of such appearance, including the day of such appearance, and in default judgment may be signed and execution issued forthwith. The plea must be delivered to the solicitor of the department issuing out this writ.

Inquisitions need no longer be indented (see below, p. 834).

FORM 9.

Form of Scire Facias against Executors.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To A. B. of in the county of greeting. Whereas C. D. of by his bond or writing obligatory, sealed with his seal, made at Westminster in the county of Middlesex, dated the day of in the year of our Lord one thousand eight hundred and became bound to Us in the sum of of lawful money of Great Britain, payable at a day past, which said sum of money the said C. D. hath not paid or caused to be paid to Us, as We are informed. And whereas the said C. D. hath departed this life, having first made and published his last will and testament in writing, and thereby appointed you, the said A. B., executor thereof, who have duly proved the same, and taken upon yourself the execution thereof, as We are informed. And We, being desirous to be satisfied the said sum of with all the speed We can (as is just), do command you, that within fourteen days from the service of this writ, including the day of service, you cause an appearance to be entered for you in Our Court of Exchequer at Westminster; and take notice, that in default of your so doing judgment will be signed against you forthwith, and execution issued at the expiration of fourteen days from the day of signing such judgment for the said sum of together with costs, out of the goods and chattels which belonged to the said C. D. at the time of his death, and come to your hands and possession to be administered.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

Take notice, that if you appear in due time, according to the exigency of this writ, you are required to plead thereto within fourteen days from the date of such appearance, including the day of such appearance, and in default judgment may be signed and execution issued forthwith. The plea must be delivered to the solicitor of the department issuing out this writ.

FORM 10.

Form of Writ of Execution for removal of Persons intruding or for the Possession and Costs where no Fine sought to be levied.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the sheriff of the county of greeting. Whereas, by virtue of a judgment entered up in Our Court of Exchequer at Westminster, We command you, that you omit not by reason of any liberty of your bailiwick, but that you enter the same, and immediately after receipt of this Our writ you remove or cause to be removed and every other person, from the possession of and from all and every part or parcel thereof, and that you take the said into Our hands, so that We may hold the same to Us, Our heirs and successors, for ever, free from any disturbance, or interruption from the said or any person or persons claiming under him; * [*if for possession only, then proceed thus:*] and that you make distinctly and plainly appear to the Barons of our Exchequer at Westminster, on the day of in what manner this Our command shall have been executed, and that you then have there this writ.

Witness, &c. [*as at the end*].

[*If for costs as well as possession, then proceed thus from asterisk (*)*] And we further command you that you cause to be made and levied to Our use of the goods and chattels, lands and tenements, of the said in your bailiwick, the sum of of lawful money of Great Britain, which We, by the aforesaid judgment have recovered against the said for costs, and when you have levied the said money that you have the same before the Barons of Our Exchequer at Westminster, on the day of to be then paid into Our Court to Our use; and if it shall happen that the goods and chattels, lands and tenements, or the said shall not be sufficient to pay the said money, then that you omit not by reason of any liberty of your bailiwick, but that you enter the same, and take the said by body wherever he shall be found in your said bailiwick, and that you keep him safely and securely so that you have body before Our said Barons at the said day and place, to satisfy Us the said money, and that you make distinctly and clearly appear to Our said Barons on the said day of all that you have done in the premises, and have there this writ.

Witness at Westminster, the day of in the year of our Lord one thousand eight hundred and .

[*If for costs only, the ordinary fi. fa. may issue by inserting the words "for costs," after stating the amount, and "money" instead of "debt," in latter part of writ.*

Where fine in addition to possession and costs, or damages, are sought to be recovered, this form may be altered accordingly.]

EXCHEQUER RULES, 1860.

FORM 11.

Form of Writ of Execution on Estreat.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the sheriff of Our of greeting. We command you, that you do not omit by reason of any liberty in your bailiwick, but enter the same, and levy out of the goods and chattels of the several persons named in the schedules annexed to this writ, the several sums of money charged upon them and each of them in the said schedules, or required from them, or any of them, so that you have that money before the Barons of Our Exchequer at Westminster without delay, and from time to time as you shall levy the same. And if it shall happen that the goods and chattels of the said persons in the said schedules named, or of any of them, are not sufficient in your bailiwick for payment of the several sums of money charged upon them and each of them in the said schedules, then you shall not omit by reason of any liberty in your bailiwick, but enter the same and take the bodies of the several persons and each of them not having goods (peers, lords, and ladies only excepted), wherever you shall find them in your bailiwick, and keep them in safe custody in Our prison until they have fully satisfied Us the several debts charged upon them and each of them in the said schedules. And what you shall do herein you shall make appear to the Barons of Our Exchequer at Westminster on the day of next ensuing, and that you then have there this writ.

Witness at Westminster, the day of in the year of our Lord one thousand eight hundred and .

FORM 12.

For recovery of Duty under the Legacy or Succession Acts, or for recovery of both those Duties.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; To greeting. Whereas We have been given to understand in Our Court before Our Barons of the Exchequer at Westminster, that you being accountable party [*or, parties*] within the true intent and meaning of the Succession Duty Act, 1853, [*if issued under the Legacy Duty Acts insert, and the Legacy Duty Acts*] have been required by Our Commissioners of Inland Revenue to render an account pursuant to the said Act [*or, Acts*], and have made default therein; Now We command you [*and each of you*] that all excuses ceasing, within fourteen days from the service of this writ, or a copy thereof, you do deliver to the said Commissioners of Inland Revenue an account upon oath of [*as the case may be*], and that you do within the same time pay the duty chargeable [*as the case may be*], together with the costs of these proceedings; Or, that you the said [*and each of you*] do within the same time appear before the Barons of Our said Exchequer at Westminster, and show cause why you make default in the premises; and this you [*and each of you*] are in nowise to omit upon pain of process of contempt issuing against your person for your neglect herein.

Witness at Westminster, the day of in the year of our Lord one thousand eight hundred and .

For recovery of Succession Duty after Account delivered.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; To - greeting. Whereas We have been given to understand in Our Court before Our Barons of the Exchequer at Westminster, that you being accountable party [*or, parties*] within the true intent and meaning of the Succession Duty Act, 1853, have, as required thereby, delivered to Our Commissioners of Inland Revenue an account of the property for the duty whereon you are accountable, and that the said Commissioners have, in pursuance of the said Act, assessed the duty on such account, but that you have made default in payment of the same or some part thereof. Now, We having been likewise given to understand in manner aforesaid that there has been no appeal from the said assessment, and no notice of disputing the liability to the same, do command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do pay to the said Commissioners of Inland Revenue, or their proper officer, the said duty so assessed, or such part thereof as shall at the time of such service be by law due and payable, together with the costs of these proceedings. Or that you the said [*and each of you*] do within the same time appear before the Barons of Our said Exchequer at Westminster, and show cause why you make default in the premises, and this you [*and each of you*] are in nowise to omit upon pain of process of contempt issuing against your person for your neglect herein.

Witness at Westminster, the day of in the year of our Lord one thousand eight hundred and .

The two forms, which here compose Form 12, were substituted for the form appearing in the Rules of 1860 by the Rules of 1861, p. 800.

FORM 13.

Writ of Inquiry to ascertain Amount of Profits or Damages.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of the county of greeting: Whereas Our Attorney-General on Our behalf hath lately in Our Court of Exchequer at Westminster filed an information against A. B. for [*state the substance of the information, exclusive of the conclusion, then proceed thus:*] And the said Attorney-General hath claimed on Our behalf £ : And such proceedings were thereupon had in Our said Court, that We ought to recover against the said A. B. Our damages on occasion of the premises; but because it is unknown to Our said Court what damages We have sustained in that behalf, therefore We command you that by the oath of twelve good and lawful men of your bailiwick you diligently inquire what damages We have sustained on occasion of the premises aforesaid, and that you send to the Barons of Our Exchequer at Westminster on the day of now next ensuing the inquisition which you shall thereupon take under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ.

Witness , at Westminster, the day of in the year of our Lord one thousand eight hundred and .

SCHEDULE B.

The forms in the following judgments are to be used when there is no entry on the roll. When a roll is carried in, the proceedings, with the dates when they arose, must be entered on the roll, and the judgment in that case, from the words "Therefore it is considered" in the following forms, may be adapted to the particular case.

Form of Judgment by Default, &c. to Subpœna.

In the Exchequer.

[Now "In the High Court of Justice, King's Bench Division (King's Remembrancer)."]

The day of , in the year of our Lord one thousand eight hundred and .

(*Teste of writ.*)

Middlesex to wit. On the day and year above written a writ of subpœna issued forth of this Court against A. B. at the suit of Her Majesty's Attorney-General, on behalf of Her Majesty, for [*state shortly for what the writ is issued*].*

[*For want of Appearance, thus :*]

And whereas the said A. B. was, on the day of , A.D. 18 , duly served with the said writ, but hath made default in appearing thereto, and thereupon an information, numbered , was on the day of A.D. 18 , filed against him in this Court: Therefore, &c. (*judgment as after set out*).

[*For want of Plea as above to asterisk (*), then proceed thus :*]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney, entered an appearance to the said writ, but hath made default in pleading to the information, numbered , filed against him in this Court on the day of , A.D. 18 : Therefore, &c. (*judgment as after set out*).

[*Withdrawal of Plea as in first form to asterisk (*), then proceed thus :*]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney, entered an appearance to the said writ, and afterwards pleaded to the information, numbered , filed against him in this Court on the day of A.D. 18 . And on the day of A.D. 18 , the defendant withdrew such plea: Therefore, &c. (*judgment as after set out*).

[*Confession to information as in the first form to asterisk (*), then proceed thus :*]

And whereas on the day of , the said A. B. by , his attorney, entered an appearance to the said writ, and on the day of confessed to the information, numbered , filed in this Court against him on the day of A.D. 18 .

[*For Debt or Duties.*]

Therefore, it is considered that Her Majesty do recover against the said A. B. the several sums of money in the said information mentioned, amounting altogether to the sum of £ [*or, the sum of £ in the said information mentioned. If costs taxed in any case, conclude thus or as near as may be:*] and also the sum of £ for Her Majesty's costs of suit, which said sums in the whole amount to £ .

Judgment
signed the
day of
A.D. 18 .

[*For Penalties.*]

Therefore, it is considered that the said A. B. be convicted of the offence [*or, Judgment
several offences*] in the said information mentioned, and that he do for his said signed the
offence [*or, offences*] forfeit the sum of £ [*or, the several sums of money* day of
amounting together to the sum of £] in the said information also mentioned, A.D. 18 .
and that Her Majesty do recover against the said A. B. the said sum of £
[*if costs taxed, proceed as in preceding form*].

[*Penalties and Duties.*]

Therefore, it is considered that the said A. B. be convicted of the several offences Judgment
in the 1st, 2nd, and 3rd counts [*or, as the case may be*] of the said information signed the
mentioned, and that he do, for his said offences, forfeit the several sums in those day of
counts respectively mentioned, amounting to the sum of £ , and that Her A.D. 18 .
Majesty do recover against the said A. B. the said sum of , and also the
several sums of money in the 4th, 5th, and 6th counts [*or, as the case may be*],
of the said information mentioned, amounting to the sum of £ , which
sums together make the sum of £ [*if costs taxed, proceed as in first form*].

[*For Intrusion to remove Persons intruding.*]

Therefore, it is considered that the said A. B. be convicted of the entry, intrusion, Judgment
and making entry in the said information mentioned, and that he be removed signed the
from the possession of in the said information mentioned * [*if fine sought day of
to be recovered, these words may be inserted:*] and that the said A. B. be taken by A.D. 18 .
his body to make fine with our Lady the Queen for his said entry and intrusion.

Where the judgment is an interlocutory one against one of the defendants (see note to Rule 29, p. 758) it should proceed after the asterisk (*), thus: "but because it is convenient that execution for the entry, intrusion, and making entry by the said A. B. in the said information mentioned be stayed until judgment be given or signed with respect to the alleged entry, intrusion, and making entry by the said C. D., Therefore let all proceedings be stayed in the meanwhile against the said A. B." Compare the form below, p. 793.

When Judgment by Default is signed in respect of part only of the Premises.

Therefore, it is considered that the said A. B. be convicted of the entry, intrusion, and making entry on part of the premises in the said information mentioned, that is to say [*describe the part*], and that he be removed from the possession of the said [*describe the part as before*], in the said information mentioned [*conclude as before*].

[*For Form of Interlocutory and final Judgment in Intrusion to recover Profits or Damages, see p. 788.*]

Form of Judgment when Proceedings are by Capias.

For Non-appearance after Service of Information in Gaol.

The day of in the year of our Lord 18 .

(*Teste of writ.*)

Middlesex to wit. On the day and year above written, a writ of capias issued forth of this Court against A. B. at the suit of Her Majesty's Attorney-General on behalf of Her Majesty for the forfeiture of the sum of £ * [*or, as the case may be*]. And whereas the said A. B. hath been arrested by virtue of the said writ, and taken to prison by the sheriff of the county of , and neglecting to give bail to the said sheriff for his appearance in this Court, an

Judgment
signed the
day of
A.D. 18 .

information, numbered , was on the day of A.D. 18 , filed therein against the said A. B., a copy of which information was served upon him on the day of A.D. 18 ; and the said A. B. still neglecting to appear here in Court, or plead to the said information for twenty days after such service: therefore it is considered that the said A. B. be convicted of the several offences in the said information mentioned, and that he do for his said offences forfeit the several sums of money in the said information mentioned, amounting together to the sum of £ , and that Her Majesty do recover against the said A. B. the said sum of £ , [if costs taxed, proceed] and also the sum of £ for Her Majesty's costs of suit, which said sums in the whole amount to £ [if for debt or duties, the same form of judgment, from the words " Therefore, &c.," may be used as is mentioned under the previous head of " Judgment by default to subpœna"].

[For Want of Appearance after giving Bail to Sheriff. As in preceding Form to asterisk (*), then proceed thus:]

And whereas the said A. B. was on the day of A.D. 18 , arrested by the sheriff of the county of by virtue of the said writ, but hath made default in appearing thereto; and thereupon an information, numbered , was on the day of A.D. 18 , filed against him in this Court: therefore, &c. [conclude as before].

[For want of Plea. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney, entered an appearance to the said writ, and put in special bail herein, but hath made default in pleading to the information, numbered , filed against him on the day of A.D. 18 , in this Court: therefore, &c. [conclude as before].

[On Withdrawal of Plea. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney, entered an appearance to the said writ, and put in special bail herein, and afterwards pleaded to the information, numbered , filed against him in this Court on the day of A.D. 18 , and on the day of A.D. 18 , the defendant withdrew such plea: therefore, &c. [conclude as before].

[Confession to Information. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney, entered an appearance to the said writ, and on the day of A.D. 18 , confessed to the information numbered , filed in this Court against him on the day of A.D. 18 : therefore, &c. [conclude as before].

Form of Judgment by Default for Want of Appearance to Scire Facias, Plea, &c., and after Verdict.

The day of in the year of our Lord 18 .

(Teste of Writ.)

Middlesex [or county] to wit. On the day and year above written, a writ of scire facias issued forth of this Court against A. B. for the recovery of the sum

of £ , the penalty of a certain bond given to Her Majesty by the said A. B., bearing date the day of A.D. 18 , [or *state the substance of Judgment signed the writ*].* And whereas the said A. B. was on the day of in the day of year of our Lord 18 , duly served with the said writ, but hath made default in appearing thereto: therefore it is considered that Her Majesty recover against the said A. B. the said sum of £ , in the said writ of scire facias mentioned, and [if costs taxed, proceed] also the sum of £ for Her Majesty's costs of suit, which said sums in the whole amount to £ .

[For Want of Plea, Rejoinder, or not joining in Demurrer, &c. As in preceding Form to asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney [or, in person], entered an appearance to the said writ, but hath made default in pleading thereto [or, *rejoining to the replication of Her Majesty's Attorney-General; or, joining in the demurrer of Her said Majesty's Attorney-General to the of the said defendant:*] therefore, &c. [as in preceding form].

[Withdrawal of Plea. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney [or, in person], entered an appearance to the said writ, and afterwards pleaded thereto; and on the day of A.D. 18 , withdrew such plea: therefore, &c. [as before].

[Confession to Scire Facias. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by his attorney, entered an appearance to the said writ, and on the day of A.D. 18 , confessed thereto: therefore, &c. [as before].

[After Verdict. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney [or, in person], entered an appearance to the said writ, and pleaded thereto; and whereas on the day of A.D. 18 , on a verdict of the country, the said A. B. was found indebted to Her Majesty in the sum of £ in the said writ of scire facias mentioned: therefore, &c. [as before].

[If for Defendant after Verdict. To asterisk (*), then proceed thus:]

And whereas on the day of A.D. 18 , the said A. B., by C. D., his attorney [or, in person], entered an appearance to the said writ, and pleaded thereto; and whereas on the day of A.D. 18 , on a verdict of the country, the same was found for the defendant; therefore it is considered that as to the sum of £ in the said writ of scire facias mentioned, the said A. B. do go hence without day. [If costs taxed, thus:] and that the said A. B. do recover from the Crown the sum of £ , for his costs of defence.

Form of Judgment on Information for Profits or Damages assessed on a Writ of Inquiry.

In the Exchequer.

[Now "In the High Court of Justice, King's Bench Division (King's Remembrancer)."]

The day of in the year of our Lord 18 .

(*Teste of writ.*)

Middlesex [*or county*] to wit. On the day and year above written a writ of subpoena issued forth of this Court against A. B. at the suit of Her Majesty's Attorney-General on behalf of Her Majesty for* [*state for what the writ issued*].

[*For Want of Appearance, thus:*]

And whereas the said A. B. was on the day of A.D. 186 , duly served with the said writ, but hath made default in appearing thereto, and thereupon an information numbered was on the day of A.D. 186 , filed against him in this Court: and the said A. B. not having appeared, Her Majesty remains therein undefended against the said A. B.: wherefore, &c. [*as after*].

[*For Want of Plea, as above to asterisk (*).*]

And whereas on the day of A.D. 186 , the said A. B., by C. D., his attorney, entered an appearance to the said writ, but hath made default in pleading to the information numbered filed against him in this Court on the day of A.D. 186 : and the said A. B. having made such default and said nothing in bar or preclusion of the said information, whereby Her Majesty remains therein undefended against the said A. B.: wherefore Her Majesty ought to recover against the said A. B. Her [*profits or damages, as the case may be*] on occasion of the premises; ** but because it is unknown to the Court here what damages Her Majesty hath sustained in that behalf, the sheriff is commanded that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what damages Her Majesty hath sustained on occasion of the premises, and that he send the inquisition which he shall thereupon take to the Barons of our Exchequer at Westminster, on the day of under his seal and the seals of those by whose oath he shall take that inquisition, together with the writ of our said Lady the Queen, to him thereupon directed, the same day is given to Her Majesty's Attorney-General at the same place; at which day comes here the said Attorney-General and the sheriff, to wit, S. S., Esquire, sheriff of the said county of now here, returns a certain inquisition indented taken before him at in the county aforesaid, on the day of A.D. 186 , by the oath of twelve good and lawful men of his bailiwick, by which it is found that Her Majesty hath sustained damages on occasion of the premises to £ over and above Her costs of suit: therefore it is considered Her Majesty do recover against the said A. B. Her damages aforesaid by the said inquisition above found, and also £ for Her costs of suit by the Court here adjudged to Her said Majesty, which said damages and costs in the whole amount to £ . [*A capiatur pro fine may be added, if necessary.*]

An interlocutory judgment will end at the double asterisk (**).

Form of Judgment after Verdict on Information or on Demurrer.

In the Exchequer.

[Now "In the High Court of Justice, King's Bench Division (King's Remembrancer)."]

The day of , in the year of our Lord 18 .

Middlesex to wit. On the day and year above written, a writ of subpoena (*or, capias*) issued forth of this Court against A. B., at the suit of Her Majesty's Attorney-General on behalf of Her Majesty: and whereas on the day of

A.D. 18 , the said A. B., by , his attorney, entered an appearance to the said writ, and hath pleaded [*or, demurred*] to the information, numbered , filed against him on the day of A.D. 18 .* And whereas on the day of A.D. 18 , on a verdict of the country, the said A. B. was found [*if for penalties*] guilty of the several offences, and each and every of them, in the said information mentioned: therefore, &c., *as post*.

[*If in Customs or Excise, and the single value of the goods be found, proceed thus:*] And the jury found the single value of the goods in the said information mentioned to be £ : therefore, &c.

[*If for duties, indebted to Her Majesty in the several sums of money in the said information mentioned: therefore, &c.*]

[*If on intrusion, here state how the verdict was found: therefore, &c.*]

[*If for damages, here state how the verdict was found: therefore, &c.*]

[*If special verdict:* And whereas on the day of A.D. 18 , on the trial of this information, a special verdict was found by the jury: and whereas on the day of A.D. 18 [*when judgment given*], on the argument of the said special verdict, the said A. B. was declared indebted to Her Majesty in the sum of £ : therefore, &c.]

[*After argument on demurrer. As above to asterisk (*), then proceed thus:*]

And whereas on the day of A.D. 18 , on the argument of the demurrer of the said to the of the said , the said demurrer was allowed [*or, overruled*]: therefore, &c.

[*If for Penalties.*]

Therefore it is considered that the said be convicted of the several offences in the said information mentioned [*or, in the first and second counts of the said information mentioned, as the case may be*], and that he do for his said offences forfeit the several sums of money in the said information also mentioned [*or, in the said first and second counts of the said information mentioned*], amounted together to the sum of £ [*if single value found*, forfeit the sum of £ being the treble value of the goods in the said information mentioned, *or, in the first and second counts of the said information mentioned, or as the case may be*], and that Her Majesty recover against the said the sum of £ ; [*if costs taxed, proceed thus:*] and also the sum of £ , for Her Majesty's costs of suit, which said sums in the whole amount to £ .

[*If for Duties.*]

Therefore it is considered that Her Majesty recover against the said the several sums of money in the said information mentioned, amounting together to the sum of £ [or, the sum of £ in the said informa-
Judgment signed the day of A.D. 18 .

tion mentioned]; [*if costs taxed, proceed thus :*] and also the sum of £
for Her Majesty's costs of suit, which said sums in the whole amount to £

[*If for Intrusion.*]

Judgment
signed the
day of
A.D. 18 .

Therefore it is considered that the said A. B. be convicted of the entry, intrusion, and making entry in the said information mentioned [*or, if for part only of the premises, describe the same as on p. 785*], and that he be removed from the possession of in the said information mentioned [*if fine sought to be recovered, these words may be inserted :*] and that the said A. B. be taken by his body to make fine with our Lady the Queen for his said entry and intrusion [*if costs taxed, proceed thus :*] and that Her Majesty do recover against the said the sum of £ for Her Majesty's costs of suit.

[*If for Damages.*]

Judgment
signed the
day of
A.D. 18 .

Therefore it is considered that Her Majesty recover against the said A. B. the said moneys by the jurors aforesaid in form aforesaid assessed, and also £ for Her Majesty's costs of suit, which said moneys and costs in the whole amount to £

Judgment in part for Crown and part for Defendant.

Judgment
signed the
day of
A.D. 18 .

Therefore it is considered that the said A. B. be convicted of the several offences in the first and second counts of the said information mentioned [*or as the case may be*], and that he do for his said offences forfeit the several sums of money in the said first and second counts of the said information mentioned, amounting together to the sum of £ [*if costs taxed, proceed thus :*] and also the sum of £ for Her Majesty's costs of suit, which said sums in the whole amount to £ . And it is further considered that as to the several other offences in the remaining counts of the said information mentioned the said A. B. do go hence without day.

[*If for Defendant. As above to asterisk (*), then proceed thus :*]

Judgment
signed the
day of
A.D. 18 .

And whereas on the day of A.D. 18 , on a verdict of the country, the said A. B. was found not guilty of the several offences [*or, not indebted to Her Majesty in the several sums of money; or, in intrusion; or, for damages, according to the facts*] in the said information mentioned: therefore it is considered, that, as to the several offences [*or, several sums of money; or, in intrusion; or, for damages, as the case may be*] in the said information mentioned, the said A. B. do go hence without day [*if costs taxed, proceed :*] and that the said A. B. do recover from the Crown the sum of £ for his costs of defence. [*If on special verdict, the above form to be varied accordingly.*]

Form of Judgment on Writ of Appraisement and no Claim.

In the Exchequer.

[Now "In the High Court of Justice, King's Bench Division (King's Remembrancer)."]

The day of in the year of our Lord 18 .

(*Teste of Writ of Appraisement.*)

Middlesex to wit. On the day and year above written, a writ of our Lady the Queen issued forth of this Court, for the valuing of several parcels of [here

set out the goods, or as the case may be] seized as forfeited by _____ officers of [Excise], and an information of seizure has been filed, praying that the said goods [or as the case may be] may remain forfeited. And by an indenture filed in this Court, numbered _____, and made on the _____ day of _____ A.D. 18 _____, the said [goods] are appraised at the sum of £ _____, and whereas no claim has been entered to the said goods [or as the case may be]: therefore it is considered that the said [goods] do remain forfeited, and that the same be delivered to the Commissioners of _____, or their assigns, to be disposed of according to the statute in that behalf.

Judgment
signed the
day of
A.D. 18 _____.

Form of Judgment on a Verdict on Information in Rem.

The _____ day of _____, in the year of our Lord 18 _____.

(*Teste of Writ of Appraisement.*)

Middlesex to wit. On the day and year above written, a writ of appraisement issued forth of this Court for the appraisement of several parcels of seized as forfeited by _____ officers of _____: and whereas on the _____ day of _____ A.D. 18 _____, A. B. of _____, by C. D., his attorney, entered an appearance and claim in this Court to the said goods [or as the case may be], and pleaded to the information numbered _____, filed on the _____ day of _____ A.D. 18 _____, for the recovery of the same:* and whereas on the _____ day of _____ A.D. 18 _____, on a verdict of the country, the said [goods] were found to be forfeited to Her Majesty: therefore, it is considered that the said goods [or as the case may be] do for the several reasons aforesaid remain forfeited, and that the same be delivered to the Commissioners of _____ or their assigns, to be disposed of according to the form of the statute in that case made and provided [*if costs taxed, proceed thus:*] and that Her Majesty do recover against the said A. B. the sum of £ _____ for Her Majesty's costs of suit.

Judgment
signed the
day of
A.D. 18 _____.

[*If Verdict for Claimant. As above to asterisk (*), then proceed thus:*]

And whereas on the _____ day of _____ A.D. 18 _____, on a verdict of the country, the said [goods] were found not to have been forfeited: therefore it is considered that the said goods [or as the case may be] be delivered to the said A. B., or to his assigns [*if costs taxed, proceed:*] and that the said A. B. do recover from the Crown the sum of £ _____ for his costs of defence.

Judgment
signed the
day of
A.D. 18 _____.

Form of Judgment for Want of Plea or other Pleadings, or after Verdict, or upon Demurrer to Extent or Diem Clausit Extremum.

The _____ day of _____ in the year of our Lord 18 _____.

(*Teste of Writ.*)

Middlesex [or county] to wit. On the day and year above written a writ of extent [or, *diem clausit extremum*] issued forth of this Court, directed to the sheriff of the county of _____ against A. B., for the recovery of the sum of £ _____ for [as the case may be]:

And whereas by an inquisition taken by virtue of the said writ by the sheriff of the said county of _____, and filed in this Court, the said A. B. was found possessed of [here set out the property (shortly) which is claimed]:

And whereas on the _____ day of _____ A.D. 18 _____, claim was entered by C. D. of _____ by E. F., his attorney, to [the property claimed]*: and whereas default was made by the said C. D. in pleading to the said writ: therefore it is con-

Judgment
signed the
day of
A.D. 18 _____.

sidered that the said [*the property claimed*] do remain in Her Majesty's hands [*if costs taxed*] and that Her Majesty do recover against the said C. D. the sum of £ for Her Majesty's costs of suit.

[*For not Rejoining. As above to asterisk (*), then proceed thus :*]

And whereas default was made by the said C. D. in rejoining to the replication of Her Majesty's Attorney-General: therefore, &c. [*as before*].

[*For not joining in Demurrer. As above to asterisk (*), then proceed thus :*]

And whereas default was made in joining in the demurrer of Her said Majesty's Attorney-General to the of the said defendant: therefore, &c. [*as before*].

[*If after Trial. As before to asterisk (*), then proceed thus :*]

And whereas after issue had been joined in this cause, and on the trial thereof on the day of A.D. 18 , a verdict was found for Her Majesty: therefore, &c. [*as before*].

[*On Argument of Demurrer. As before to asterisk (*), then proceed thus :*]

And whereas on the day of A.D. 18 , on the argument of the demurrer of the said to the of the said , the said demurrer was allowed [*or, overruled*]: therefore, &c. [*as before*].

[*On Withdrawal of Claim. As before to asterisk (*), then proceed thus :*]

And whereas on the day of A.D. 18 , the said C. D. withdrew his claim and plea to the property so claimed by him: therefore, &c. [*as before*].

[*If Verdict for Defendant. As before to asterisk (*), then proceed thus :*]

And whereas after issue had been joined in this cause, and on the trial thereof on the day of A.D. 18 , a verdict was found for the said C. D.: therefore it is considered that Her Majesty's hands be amoved from the possession of the said , in the said inquisition mentioned, and that the same be restored to the said C. D., and that the said C. D. do recover against the Crown £ for his costs in this behalf.

Judgment
signed the
day of
A.D. 18 .

[*On Demurrer. As before to asterisk (*), then proceed thus :*]

And whereas on the day of A.D. 18 , on the argument of the demurrer of the said to the of the said , the said demurrer was allowed [*or, overruled*]: therefore, &c. [*as before*].

Form of Judgment on Special Case.

In the Exchequer.

[Now "In the High Court of Justice, King's Bench Division (King's Remembrancer)."]

The day of , in the year of our Lord 18 .

(*Date of Order.*)

(*Title of Suit or Matter.*)

Whereas by an order of the Honourable Mr. dated the day of A.D. 18 , it was ordered that [*state the substance of the order*]: and

whereas, in pursuance of the said order, a case was stated between [the parties], which case was, on the day of A.D. 18 , filed in the office of the Queen's Remembrancer [*if error brought, enrol special case, introducing these words "and is to the effect following"*] And afterwards, on the day of A.D. 18 , the Court was of opinion that [*state the substance of the judgment:*] therefore it is considered that, &c. [*state the judgment, as in other cases, according to the judgment of the Court*].

Judgment signed the day of A.D. 18 .

Form of Judgment by Default against one Defendant, and another pleads to Issue, and Issue found for the Crown.

In the Exchequer.

As to title, see preceding form.

The day of , in the year of our Lord 18 .

(*Teste of writ.*)

Middlesex to wit. On the day and year above written, a writ of subpoena issued forth of this Court against A. B. and C. D., at the suit of Her Majesty's Attorney-General, on behalf of Her Majesty, for [*here state shortly for what the writ is issued*]: and whereas on the day of A.D. 18 , the said A. B., by E. F., his attorney, entered an appearance to the said writ, and pleaded to the information, numbered , filed against him and the said C. D. on the day of A.D. 18 : and whereas the said C. D. was, on the day of A.D. 18 , duly served with the aforesaid writ, but hath made default in appearing thereto, and thereupon the said information, numbered , has been filed against him and the said A. B. in this Court, and by reason of the default of the said C. D.: therefore it is considered that Her Majesty ought to recover against the said C. D. the several penalties in the said information mentioned: but because it is unknown to the Court what penalties the said A. B. hath incurred, and because it is convenient that there be but one judgment for the penalties in the said information mentioned, therefore let the giving of the same against the said C. D. be stayed until the trial of the issue joined between Her Majesty's Attorney-General and the said A. B. And whereas on the trial of the said issue so joined on a verdict of the country on the day of A.D. 18 , the said A. B. was found guilty of the several offences, and each and every of them, in the said information mentioned; therefore it is considered that the said A. B. and C. D. be convicted of the several offences in the said information mentioned, and that they do for their said offences forfeit the several sums of money in the said information mentioned, amounting together to the sum of £ , and that Her Majesty recover against the said A. B. and C. D. the said sum of £ ; [*if costs taxed, proceed thus:*] and also the sum of £ for Her Majesty's costs of suit, which said sums in the whole amount to £ .

The Customs Act, 16 & 17 Vict. c. 107, s. 267 [*now the Customs Consolidation Act, 1876, s. 222*] entitles the Crown to final judgment against each defendant, when the penalty is joint and several. This form is applicable when a joint penalty or debt is sued for.

Judgment signed the day of A.D. 18 .

(*The above form may be adapted, with such alterations as may be necessary, to meet the cases of Duties or Intrusion.*)

Form of Judgment of Affirmance where Judgment given for the Crown to be entered on original Judgment Roll.

[*To the end of the Judgment on the Roll in the Suit, and then proceed thus:*]

Afterwards, on [*the day of lodging the note of error*], the said defendant delivered to the Queen's Remembrancer of this Court a memorandum in writing

Judgment
signed the
day of
A.D. 18 .

alleging that there was error in law in the record and proceedings aforesaid; and afterwards, on [*the day of making the suggestion on the roll*], the said defendant said that there was error in the record and proceedings aforesaid; and the said Attorney-General, on behalf of Her said Majesty, said that there was no error therein; and thereupon, afterwards, on [*the day of giving judgment in Exchequer Chamber*], before the Justices of our Lady the Queen assigned to hold pleas in the Court of our Lady the Queen, before the Queen herself and the Justices of the Common Bench of our said Lady the Queen came the said Attorney-General, and the said defendant, by his attorney aforesaid; and it appeared to the said Court of Error in the Exchequer Chamber* that there was no error in the record and proceedings aforesaid, or in giving the judgment aforesaid: therefore it was considered by the said Court of Error that the judgment aforesaid be in all things affirmed and stand in full force and effect, the said causes above for error suggested [*or, assigned*] in anywise notwithstanding; and that Her Majesty do recover against the said defendant £ by the said Court of Error adjudged to Her said Majesty for costs which Her Majesty has sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of the prosecution of the said proceedings in error; and that Her Majesty have execution thereof, &c. And thereupon the record and proceedings aforesaid, with the judgment aforesaid so affirmed by the said Court of Error as aforesaid, and the said judgment of that Court, were by the said Remembrancer duly brought back into the said Court here, in order that the said Court here might award such further proceedings as might be necessary upon the record aforesaid, and upon the said judgment and proceedings so affirmed as aforesaid.

Form of Judgment of Reversal where Judgment originally given for the Crown.

[*As in before-mentioned form to asterisk (*)*, then proceed thus :]

Judgment
signed the
day of
A.D. 18 .

That there was manifest error in the record and proceedings aforesaid, and in giving the judgment aforesaid: therefore it was considered by the said Court of Error that the judgment aforesaid for the error aforesaid alleged be reversed, annulled, and altogether holden for nought, and that the said defendant be restored to all things which he hath lost by occasion of the said judgment, &c.; and that Her Majesty's Attorney-General, on behalf of Her Majesty, take nothing by his said writ; and that the said defendant do go thereof without day, &c.; and that the said defendant do recover against the Crown £ for his costs of defence in this behalf by the said Court of Error adjudged to the said defendant; and thereupon the record and proceedings aforesaid [*conclude as in previous form, but, instead of "affirm," say "reversed"*].

[N.B.—*The above forms may be varied to meet the case of discontinuance of error, withdrawal of same, non pros., or as the case may be.*]

The two preceding forms are now obsolete, see pp. 214, 768.

SCHEDULE C.

In the following forms, "In the High Court of Justice, King's Bench Division (King's Remembrancer)" must be substituted for "In the Exchequer," "one of the Judges of His Majesty's High Court of Justice" for "one of the Barons of Her Majesty's Court of Exchequer at Westminster," and "Lord Chief Justice of England" for "Lord Chief Baron of this Court."

FORM No. 1.

Copy of Extent, &c., for Claimant, Nisi Prius Record, Roll, or Paper Book, may commence thus :

In the Exchequer.

The day of in the year of our Lord 18

(The teste of the writ.)

Middlesex [*or county*] to wit. On the day and year above written a writ of our Lady the Queen issued forth of this Court, in these words [*then copy writ, return, inquisition, schedules, &c.*].

The foregoing or similar introductory words may be applied to any other writ requiring enrolment.

FORM No. 2.

Copy of Transcript for Claimant, Nisi Prius Record, Roll, or Paper Book, may commence thus :

In the Exchequer.

The day of in the year of our Lord 18

(the day the transcript was filed).

Middlesex [*or county*] to wit. On the day and year above written was filed in the office of Her Majesty's Remembrancer of this Court the following transcript [*here follows the transcript*].

FORM No. 3.

Nisi Prius Record on Scire Facias, Roll, or Paper Book, may commence thus :

In the Exchequer.

The day of in the year of our Lord 18

(The teste of the writ.)

Middlesex (*or county*) to wit. On the day and year above written a writ of our Lady the Queen issued forth of this Court, in these words: "Victoria," &c.

FORM No. 4.

Form of Nisi Prius Record on Information.

In the Exchequer.

The day of in the year of our Lord 18

(date of information).

Venue.—Her Majesty's Attorney-General, on behalf of Her Majesty [*as in the information*] sues A. B., by virtue of a writ of [*subpœna*] issued out of this Court on the day of , in the year of our Lord 18 [*date of writ*], and gives the Court to understand and be informed that, &c. [*copy the information to the end, and all the pleadings, with their dates, writing each plea or pleading*]

in a separate paragraph, as in the pleadings delivered, and conclude thus:] Therefore let a jury come, &c. [Where there are several defendants, and judgment by default has been signed against one or more, this form may be altered accordingly.]

[When the trial takes place in any other county than stated in the venue, insert the Queen's prerogative after the issue joined, thus:]—And it being the prerogative of Her said Majesty that all inquisitions in personal suits instituted in this Court for and on behalf of Her Majesty be held in any part of the United Kingdom of Great Britain and Ireland called England, Her Majesty's Attorney-General, being present here in Court in his proper person, prays that an inquisition in the premises to be taken in the county of , which is ordered by the Court accordingly. Therefore let a jury come, &c.

Quære whether "personal" suits should any longer be used here, see above, p. 583.

FORM No. 5.

Introductory words of a Judgment after Verdict, when Roll carried in.

[Copy the Nisi Prius Record, and then proceed thus:]

Afterwards on the day of in the year of our Lord one thousand eight hundred and *[day of signing final judgment]* come the parties aforesaid by their respective attornies aforesaid *[or, as the case may be]*, and the Right Honourable Sir , Knight, Lord Chief Baron of this Court *[or, the Honourable Sir , Knight, as the case may be]*, hath sent hither his record had before him in these words: afterwards, &c. *[copy the postea]*: therefore it is considered, &c. *[according to the judgment]*.

FORM No. 6.

Note of Error in Law.

In the Exchequer.

The day of , in the year of our Lord 18 *[the day of lodging note of error]*.

Her Majesty's Attorney-General *[or, our Sovereign Lady the Queen]*
and
A. B.

Her Majesty's Attorney-General *[or, the plaintiff, or, defendant, as the case may be]*, says that there is error in law in the record and proceedings in this suit, and the defendant *[or, as the case may be]*, says that there is no error therein.

Signed, &c. *[Attorney]* or *[Solicitor of Department]*.

Obsolete, see pp. 214, 768.

FORM No. 7.

Suggestion of Error.

The day of in the year of our Lord 18 *[the day of making the entry on the roll]*, the Attorney-General *[or, defendant, as the case may be]* says that there is error in the above record and proceedings, and the defendant *[or, as the case may be]* says there is no error therein.

Obsolete, see note to Form No. 6.

FORM No. 8.

Note of Error in Fact.

In the Exchequer.

The day of in the year of our Lord 18 [*the date of lodging note in error*].

Her Majesty's Attorney-General [*or, as the case may be*]
and

A. B.

in error.

The defendant [*or, as the case may be*] says that there is error in fact in the record and proceedings in this suit, in the particulars specified in the affidavit hereunto annexed.

Signed, &c. [*by Attorney*] or [*Solicitor of Department*].

Obsolete, see note to Form No. 6.

FORM No. 9.

Satisfaction Warrant.

To be endorsed by the Solicitor of the Department, and afterwards signed by the Attorney-General.

In the Exchequer.

The day of in the year of our Lord 18 [*when signed by Attorney-General*].

Between our Sovereign Lady the Queen [*or, Her Majesty's Attorney-General, informant*]

and

A. B. defendant. And Sir , Knight, Her Majesty's Attorney-General, who prosecuteth for Her said Majesty, acknowledges and confesses [*if by inquisition or extent*] that the sum of £ found due to Her Majesty from the said A. B.; [*if by bond*] that the sum of £ , the penalty of a certain bond given by the said A. B. to Her Majesty, bearing date the day of A.D. 18 ; [*if by judgment*] that a certain judgment entered against the said A. B. on the day of A.D. 18 , for the sum of £ hath been satisfied to Her Majesty's use, and that therefore Her Majesty's Attorney-General will not proceed any further in the premises against the said A. B. touching the same.

(*Endorsement.*)

The within-mentioned sum having been satisfied, I see no objection to the filing of this warrant, with the leave of the Attorney-General.

C. D.,
Solicitor of, &c.

FORM No. 10.

Form of Recognisance of Bail on Capias.

In the Exchequer.

Be it remembered, that A. B. of C. D. of and E. F. of , come in their proper persons before the Honourable Sir , Knight, one of the Barons of Her Majesty's Court of Exchequer at Westminster, [*or, before*

G. H., a commissioner duly authorised for taking special bail in Her Majesty's Court of Exchequer at Westminster,] on the day of in the year of our Lord one thousand eight hundred and , and jointly and severally acknowledge themselves to be indebted to Her present Majesty, Queen Victoria, Her heirs or successors, in the sum of pounds.

£

Upon condition that if the said A. B. shall satisfy Her said Majesty all the penalties [or, *if for duties*, the several sums of money] sued for upon an information [*if information not filed*, say to be] exhibited against him before the Barons of this Exchequer by Her said Majesty's Attorney-General for the forfeitures and offences [or, *if for duties*, recovery of the several sums of money,] in the said information mentioned, or otherwise, if the said A. B. shall render himself a prisoner in the Court here, then this recognisance of bail to be void, or else to be and remain in full force and virtue.

Taken and acknowledged at	}	A. B.
the day and year above written.		C. D.
Before me,		E. F.

For "before the Barons of this Exchequer" substitute "in this Court" or "in the High Court of Justice."

As to commissioners for taking special bail, see note to Rule 18, p. 756.

FORM NO. 11.

Form of Recognisance of Bail in Error.

In the Exchequer.

Be it remembered, that A. B. of C. D. of and E. F. of , come in their proper persons before the Honourable Sir , Knight, one of the Barons of Her Majesty's Court of Exchequer at Westminster, [*or, before G. H.*, a commissioner duly authorised for taking special bail in Her Majesty's Court of Exchequer at Westminster,] on the day of in the year of our Lord one thousand eight hundred and , and jointly and severally acknowledge themselves to be indebted to Her present Majesty Queen Victoria, Her heirs or successors, in the sum of

£

Whereas the above-named A. B. hath delivered a memorandum in writing to the Queen's Remembrancer of this Court, alleging that there is error in law in the record and proceedings upon the information exhibited against him therein by Her Majesty's Attorney-General. The condition, therefore, of this recognisance is such, that if the said A. B. shall prosecute the proceedings in error with effect, and shall also satisfy and pay, if the said judgment of the said Court upon the said information shall be affirmed, or the proceedings in error discontinued by the said A. B., all and singular the sum or sums of money adjudged or to be adjudged upon the said judgment, and all costs and damages to be also awarded for the delaying of execution thereon, then this recognisance to be void or else to be and remain in full force and virtue.

Taken and acknowledged at	}	A. B.
the day and year first above written.		C. D.
Before me,		E. F.

As to commissioners for taking special bail, see note to Rule 18, p. 756. As to error, see pp. 214, 768.

FORM No. 12.

Stamp 35s.

Recognisance for Costs on Claim.

In the Exchequer.

Be it remembered, that A. B. of in the county of (the claimant), C. D. of , and E. F. of , come in their proper persons before the Honourable Sir , Knight, one of the Barons of Her Majesty's Court of Exchequer at Westminster [*or, before G. H., a commissioner duly authorised for taking special bail in Her Majesty's Court of Exchequer at Westminster,*] on the day of in the year of our Lord one thousand eight hundred and , and jointly and severally acknowledge themselves to be indebted to Her present Majesty Queen Victoria, Her heirs or successors, in the sum of one hundred pounds.

£100.

The condition of this recognisance is such that whereas I. K., an officer of excise, hath lately seized as forfeited to the use of Her said Majesty several parcels of which said was [*or, were*] afterwards re-seized by L. M., and the property in the same is claimed by the above-named A. B., who hath entered such his claim thereto in this Court. If therefore the said A. B., his heirs, executors, or administrators shall pay or cause to be paid to the Receiver-General of Inland Revenue all such costs as shall be occasioned by the said claim, to be taxed by Her Majesty's Remembrancer of this Court, in case the said or any part thereof shall hereafter be adjudged forfeited, then this recognisance to be void or else to be and remain in full force and virtue.

Taken and acknowledged at the	A. B.
day and year first above written. }	C. D.
Before me	E. F.

See notes to Rule 18 (p. 756) and Rule 86 (p. 766). The Receiver-General is now replaced by the persons mentioned in the Public Accounts and Charges Act, 1891 (54 & 55 Vict. c. 24), s. 1.

FORM No. 13.

Stamp 35s.

Recognisance for Costs on Appeal to Privy Council.

Be it remembered, that A. B. of comes in his proper person before the Honourable Sir , Knight, one of the Barons of Her Majesty's Court of Exchequer at Westminster, on the day of , in the year of our Lord one thousand eight hundred and , and acknowledges himself to be indebted to Her present Majesty, Queen Victoria, Her heirs or successors, in the sum of pounds.

£

The condition of this recognisance is such that if C. D. shall stand and abide the determination of Her Majesty in Council on a certain petition of appeal to be entered and prosecuted by him from a of the of , bearing date the day of , and made in a certain suit wherein are and are , and if the said C. D. shall also pay such costs as may be awarded by the Judicial Committee of the Privy Council, in case the said appeal shall be dismissed, then this recognisance to be void, or else to be and remain in full force and virtue.

Taken and acknowledged the day	Before }
and year first above written.	
me	

[The above condition must depend on the order made by the Privy Council.]

EXCHEQUER RULES, 1861.

FORM No. 14.

Nolle Prosequi.

In the Exchequer.

The day of in the year of our Lord 18 .

Between our Sovereign Lady the Queen [*or, Her Majesty's Attorney-General, informant*] and A. B., defendant. And Sir , Knight, Her Majesty's Attorney-General, who prosecuteth for Her said Majesty, saith that for certain reasons him thereunto moving he will not proceed any further in the premises for Her said Majesty against the said A. B. touching the matters in the said [information] mentioned.

F. Pollock.	W. F. Channell.
Samuel Martin.	James Wilde.
G. Bramwell.	

RULES FOR PROCEEDINGS AT LAW ON THE REVENUE SIDE OF
THE EXCHEQUER, 1861.

REGULATIONS, DATED NOVEMBER 26, 1861, MADE BY THE LORD CHIEF BARON,
AS TO THE PRACTICE AND PROCEDURE ON THE REVENUE SIDE OF THE
COURT OF EXCHEQUER.

These Regulations are printed in full in St. R. and O. Rev. (ed. 1), Vol. 2, p. 683.

In pursuance of the conditions contained in the 26th section of the 22 & 23 Vict. c. 21, intituled an Act to regulate the office of Queen's Remembrancer, and to amend the practice and procedure on the Revenue side of the Court of Exchequer [*the Queen's Remembrancer Act, 1857*], and the 1st section of 24 & 25 Vict. c. 92, intituled an Act to amend the Law for the Collection of the Stamp Duties on Probates, Administrations, Inventories, Legacies, and Successions [*the Probate Duty Act, 1861, s. 1, repealed as to England by the Crown Suits, &c. Act, 1865, s. 53 and Sched. III.*]. It is ordered, that the forms of writs of summons mentioned in Rule 127, and set forth in Schedule A., Form 12, of the rules signed on the 22nd June, 1860, be annulled, and the following forms substituted in lieu thereof, so far as such forms may be applicable.

. [*The substituted forms are printed at p. 782, above.*]

Also, in pursuance of the first before-mentioned Act, it is ordered—

That in any suit or proceeding on the Revenue side of the Court all rules at side bar and motions of course bear date on the day they are drawn up.

No common information of seizure nor any writ of delivery need be signed by a judge.

. [*The remainder of these Regulations amends Rule 48 of 1860, which is printed as so amended at p. 761, above.*]

Fred. Pollock.	W. F. Channell.
Samuel Martin.	James Wilde.
G. Bramwell.	

26th November, 1861.

RULES FOR APPEALS AS TO DEATH DUTIES.

See p. 187.

In the High Court.

RULES OF THE SUPREME COURT (FINANCE ACT), 1895, DATED
JANUARY 14, 1895.

1895. No. $\frac{11.}{L. 1.}$

1. Any aggrieved person within the meaning of sect. 10, sub-sect. (1) of the Finance Act, 1894, who desires to appeal to the High Court in any of the cases mentioned in the said sub-section shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property and state the value which he contends should be put upon the same.

Sect. 10 (1) of the Finance Act, 1894, is printed above, p. 744.

2. The Commissioners shall, within a month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against or have determined to maintain the same, either in whole or in part.

3. At any time thereafter not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim either in whole or in part, the appellant may proceed with his appeal by way of petition to the High Court, such petition to be filed in the Queen's Remembrancer's Department of the Central Office, and a copy thereof served by the appellant upon the Commissioners.

4. Subject to the provisions of these Rules the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal.

5. Upon the filing of the petition and the service of a copy thereof upon the Commissioners, the matter shall be deemed to be completely at issue, and within seven days thereafter the appellant, or in default thereof the Commissioners, may set the petition down for hearing upon the Revenue side of the Queen's Bench Division of the High Court.

6. The Court or a judge may order that the petition shall be heard before a judge of the Chancery Division, and Ord. XLIX. r. 7 shall apply to any such order.

Ord. XLIX. r. 7 is as follows: "Any cause or matter transferred from any other Division to the Chancery Division shall, by the order directing the transfer, be assigned to one of the judges of that Division to be named in the order."

7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

8. In cases where pursuant to Rule 7 evidence may be by affidavit, the affidavits shall be filed in the Queen's Remembrancer's Department.

9. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents.

10. The Court or a judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the Court or judge may think right.

11. Ord. XIX. r. 27 of the Rules of the Supreme Court, 1883, shall apply to the petition, which shall be deemed to be a pleading within that rule.

Ord. XIX. r. 27 is as follows: "The Court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client."

12. Applications for leave to bring an appeal without payment, or on part payment only of the duty, under the provisions of the 4th sub-section of the 10th section of the Finance Act, 1894, shall be by summons before a judge at Chambers, and the appellant shall deliver to the Commissioners, with the summons, a copy of any affidavit which the appellant intends to use at the hearing of the summons.

Sect 10 (4) of the Finance Act, 1894, is printed above, p. 745.

13. These Rules may be cited as the Rules of the Supreme Court (Finance Act), 1895, and shall come into operation forthwith.

Signed and certified as urgent, the 14th day of January, 1895.

Herschell, C.
Russell of Killowen, C. J.
F. H. Jeune, P.
A. L. Smith, L. J.
Arthur Charles, J.
H. H. Cozens Hardy.
R. B. Finlay.
John Hunter.

In County Courts.

ORDER XLII.

The Succession Duty Act, 1853, s. 50. The Finance Act, 1894, ss. 10, 14.

Appeal under
16 & 17 Vict.
c. 51, s. 50.

1. An appeal against any assessment of the Commissioners under sect. 50 of the Succession Duty Act, 1853, shall be by petition intituled in the matter of the Succession Duty Act, 1853, and the Acts amending the same, and in the matter of the particular succession, and Rules 5 to 9 and 11 of this Order shall apply to the service of and proceedings on such petition.

Delivery of
statement of
grounds of
appeal under
57 & 58 Vict.
c. 30, s. 10.

2. Any aggrieved person within the meaning of sect. 10, sub-sect. (1) of the Finance Act, 1894, who desires to appeal to the Court under sub-sect. (5) in any of the cases mentioned in the said sub-sect. (1), shall, within one month from the date of the notification to him or his solicitor of the decision or

claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property and state the value which he contends should be put upon the same. 57 & 58 Vict. c. 30.

3. The Commissioners shall, within one month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same, either in whole or in part. Reply thereto.

4. At any time thereafter, not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim, either in whole or in part, the appellant may proceed with his appeal by filing a petition. Appeal by petition.

5. Such petition shall be intituled "In the matter of the Finance Act, 1894, and in the matter of the estate duty on the property passing on the death of _____, late of _____, deceased," and a copy thereof, with a notice of the day and hour on which the petition will be heard, shall be served on the Commissioners in accordance with Rules 3 and 4 of Ord. XXXVIII. Title and service of petition.

Ord. XXXVIII. rr. 3 and 4 are as follows:—

3. Upon the filing of a petition, the registrar shall issue the copies under the seal of the Court to the bailiff for service upon the respective persons to be served, together with a notice signed by the registrar himself and under the seal of the Court, stating the day and hour on which the petition will be heard, and that if they do not attend, either in person or by their solicitors, such order will be made and proceedings taken as the judge may think just and expedient.

4. The bailiff shall, ten days at least before the hearing, serve all copies of such petitions and notices in accordance with the rules as to the service of ordinary summonses.

6. Subject to the provisions of these Rules, the appellant shall not in his petition state or at the hearing be allowed to rely upon any ground of appeal not specifically set forth in the statement of the grounds of appeal. Limitation of grounds of appeal.

7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing. Oral evidence.

8. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents. Interrogatories, &c.

9. The judge may at any time before or at the hearing allow the appellant to amend his petition, upon such terms as the judge may think right. Amendment.

10. An application for leave to bring an appeal without payment or on part payment only of the duty, under the provisions of sub-sect. (4) of sect. 10 of the Finance Act, 1894, shall be made to the judge in accordance with the Rules as to interlocutory applications, subject to the following modifications:— Application for leave to appeal without payment of duty.

- (1.) the application shall be made on notice in writing, and on affidavit;
- (2.) the appellant shall serve notice of the application on the Commissioners three clear days before the day of the hearing of the application, and shall deliver to the Commissioners, with such notice, a copy of any affidavit which he intends to use at the hearing of the application.

11. Where the judge makes an order upon a petition under this order, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order. Order on petition.

Proceedings
for deter-
mination of
disputes
under 57 & 58
Vict. c. 30,
s. 14.

12. Proceedings for the determination of a dispute as to the proportion of estate duty to be borne by any property or person under sect. 14 of the Finance Act, 1894, shall be commenced by plaint and summons in the ordinary way, in which the person claiming to recover the amount in dispute shall be plaintiff, and the person resisting such payment shall be defendant. Particulars of demand shall be filed in every such proceeding, and shall state concisely the nature of the dispute and the relief or order which the plaintiff claims.

PETITIONS OF RIGHT (CHANCERY) RULES, 1862.

GENERAL ORDER AND RULES, DATED FEBRUARY 1ST, 1862, OF THE HIGH COURT OF CHANCERY UNDER THE PETITION OF RIGHT ACT, 1860.

The Right Honourable Richard, Baron Westbury, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir John Romilly, Master of the Rolls, and the Honourable the Vice-Chancellor Sir Richard Torin Kindersley, doth hereby, in pursuance and execution of the powers given by the statute 23 & 24 Vict. c. 34, and of all other powers and authorities enabling him in this behalf, order and direct in manner following:—

1. Upon Her Majesty's fiat being obtained to any petition of right presented in pursuance of the said Act and intituled in the Court of Chancery, such petition, with the fiat thereon, together with a printed copy of such petition and fiat (if the petition is in writing) shall be filed at the office of the Clerks of Records and Writs.

See above, p. 383.

2. Every such petition, or the printed copy thereof, so filed shall be marked with the words "Lord Chancellor" or "Master of the Rolls," and if with the words "Lord Chancellor" then also with the title of the Vice-Chancellor before whom it is intended to be prosecuted.

See now Ord. V. r. 9.

3. Every copy of a petition of right left at the office of the Solicitor of the Treasury in pursuance of the said Act, and every copy of a petition of right served upon or left at the last, or usual, or last known place of abode of any person under the provisions of that Act shall be a printed copy, sealed with the seal of the office of the Clerks of Records and Writs, in the same manner as copies of bills are now sealed. And the leaving or serving of any copy not printed or not sealed with the office seal shall be of no effect for any of the purposes of the said Act.

See above, p. 384.

4. A suppliant in any petition under the said Act desiring to file interrogatories for the examination of any person or persons who may be required to plead or answer thereto (other than Her Majesty's Attorney-General) shall file such interrogatories at the same time as such petition. And a copy, examined and marked by the Clerks of Records and Writs, of the interrogatories which any respondent is required to answer shall be served upon such respondent, together with a copy of the petition.

See above, p. 391.

5. Any person who might be admitted to prosecute a suit in this Court *in formā pauperis* may be admitted to prosecute *in formā pauperis* a petition of right intituled in this Court. And any person who might, if a defendant to an ordinary suit in this Court, have been admitted to defend *in formā pauperis* may be admitted to make his defence *in formā pauperis* to any petition of right instituted in this Court which he may be required to plead or answer to. But no person shall be admitted to prosecute any petition *in formā pauperis* without a certificate of counsel that he conceives the case to be proper for relief in this Court.

See above, p. 391.

6. The same orders and rules shall apply with regard to any person admitted to sue or defend *in formā pauperis* under these orders as are applicable with regard to paupers in suits between subject and subject.

See above, p. 391.

7. So far as the same may be applicable, and except in so far as may be inconsistent with the said Act and with the preceding orders, the general orders from time to time in force as to proceedings in suits in this Court, and the practice and course of proceeding in this Court in reference to such suits, shall be applicable, and apply and extend to proceedings in this Court in petitions under the said Act, which are, for the purposes of this order, to be considered as bills.

By this Rule the present practice of the Chancery Division is applied, subject to the Act and these Rules.

8. The duties which under the said Act and the said orders may be required to be performed by officers of this Court, shall be performed by the officers respectively, who perform duties of a similar nature in suits in this Court between subject and subject. And the fees and allowances payable to all officers and solicitors of this Court, in respect of matters under the said Act, shall be such fees and allowances as, by the practice of the Court and the general orders from time to time in force, they are entitled to take and charge for similar proceedings in cases between subject and subject.

Westbury, C.

John Romilly, M. R.

Richd. T. Kindersley, V.-C.

RULES AS TO FEES IN PROCEEDINGS BY ENGLISH INFORMATION, 1865.

The Commissioners of Her Majesty's Treasury, and the Right Honourable Sir FREDERICK POLLOCK, Knight, Lord Chief Baron of Her Majesty's Court of Exchequer, and Sir GEORGE BRAMWELL, Knight, and Sir WILLIAM FRY CHANNELL, Knight, Barons of the said Court, do hereby, in pursuance and execution of the powers in that behalf contained in the Crown Suits, &c. Act, 1865, the Common Law Courts (Fees) Act, 1865, and of every or any other power enabling them in this behalf, appoint and direct:—

1. That the fees set forth in Schedule A., hereafter mentioned, shall be charged in proceedings and suits, commenced by English information in this

Court, and such fees shall be collected, not in money, but by means of stamps, denoting the amount of such fees.

2. Such stamps shall be stamped or affixed, at the expense of the parties liable to pay fees, on or to the vellum, parchment, or paper on which the proceedings, in respect whereof such fees are payable, are written or printed, or which may be otherwise used in reference to such proceedings; and where any of such fees are payable in respect of any matter or thing to be done in the office of the Queen's Remembrancer, and it has not been customary to use in reference to such matter or thing any written or printed document or paper whereon the stamps could be stamped or affixed, the party, or his solicitor, requiring such matter or thing to be so done, shall make application for the same by a short note or memorandum in writing, and a stamp, denoting the amount of the fee so payable, shall be stamped on or affixed to such note or memorandum.

3. Every officer in the Queen's Remembrancer's office, who shall receive any document to which a stamp shall be affixed, pursuant to the provisions hereinbefore contained, shall, immediately upon the receipt of such document, cancel or deface the stamp thereon by obliterating the same by means of a stamp and printing ink, shewing the date of cancellation, and no such document shall be filed or delivered out until the stamp thereon shall have been cancelled or defaced in manner aforesaid.

4. Where stamps impressed upon adhesive paper are used, care should be taken so to select the stamps required to make up the amount to be affixed to any document as that no greater number of stamps may be affixed thereto than is actually necessary.

5. These rules shall come into operation on the 1st day of January, 1866.

THE SCHEDULE A. ABOVE REFERRED TO.

	£	s.	d.
For every oath or declaration of a witness examined before the Queen's Remembrancer or other officer	0	2	0
Upon every application to inspect affidavits and depositions, including the inspections	0	3	0
For making all office and other copies per folio of seventy-two words	0	0	4
The fee of 6d. shall be charged and taken in respect of any odd sum of 4d. or 8d.			
For filing every information	1	0	0
Upon entering every appearance if not more than three defendants ...	0	7	0
If more than three and not more than six defendants	0	14	0
And the same proportion for every like number of defendants.			
For every certificate	0	5	0
For marking every copy of an information or other document to be served or for delivery	0	5	0
For every writ of distringas, subpoena, or attachment	0	5	0
For sealing every other writ	1	0	0
Upon every application for a search for a record, and for searching ...	0	2	0
Upon every application to inspect a record, and for inspecting the same	0	5	0

Upon every application to inspect exhibits if occupied not more than one hour	£	s.	d.
one hour	0	5	0
If occupied more than one hour, per diem	0	10	0
Upon every application for the officer's attendance in another Court per diem, and for his attendance, besides reasonable expenses of the officer	1	0	0
Upon the like application for attendance in the Court of Exchequer, per diem	0	10	0
For filing supplemental statements, or statement for revivor	0	10	0
For filing answer	0	5	0
For filing every affidavit, including schedules and exhibits, or other documents not named in this Schedule	0	2	0
For amending every record of an information	0	10	0
For every decree or decretal order made by the Court on the original hearing of a cause, or on further directions	2	0	0
For every order or motion of course	0	5	0
For every other order 5s., but if more than five folios 1s. per folio extra.			
On every petition of rehearing	1	0	0
For every warrant or summons	0	3	0
For signing every report if not more than five folios	0	10	0
If more than five folios, 1s. per folio extra.			
Upon the taxation of every bill of costs as taxed, where the amount shall not exceed 20l.	0	10	0
For every additional 20l. or fractional part thereof, a further fee of ...	0	10	0
On references to the Queen's Remembrancer, per hour	0	10	0

SCHEDULE B.

Fees to be received under the 30th section of the Crown Suits, &c. Act, 1865.

The Queen's Remembrancer, or such other officer of the Court as may be authorized to take evidence as mentioned in the Crown Suits, &c. Act, 1865, s. 21, shall be entitled to receive, when the examination is at the office, for every hour in which he is employed in the examination of witnesses, the sum of	0	10	0
An examiner especially appointed by an order of the Court or a judge, for every day in which he is <i>bonâ fide</i> employed in the examination of witnesses, the sum of	3	3	0
If at a distance from his place of residence, one guinea per diem for his expenses, exclusive of travelling.			
For travelling expenses the amount actually and reasonably paid £ s. d., but in no case to exceed 1s. per mile one way.			

Given under our hands, at the Treasury Chambers, Whitehall, this 18th day of December, 1865.

E. H. KNATCHBULL-HUGESSEN.
W. P. ADAM.

We, the undersigned, Lord Chief Baron, and two Barons of Her Majesty's Court of Exchequer, do hereby signify our concurrence in the before-mentioned

EXCHEQUER RULES, 1866.

Rules and Table of Fees, and do appoint such fees to be taken in conformity with the provisions of the aforesaid Act.

FRED. POLLOCK, Lord Chief Baron of Her
Majesty's Court of Exchequer.

G. BRAMWELL,	}	Barons of Her Majesty's Court of Exchequer.
W. F. CHANNELL,		

RULES FOR PROCEEDINGS BY ENGLISH INFORMATION, 1866.

RULES, DATED MARCH 14, 1866, FOR REGULATING THE PROCEDURE AND
PRACTICE IN SUITS BY ENGLISH INFORMATION.

The Right Honourable Sir Frederick Pollock, Knight, Lord Chief Baron of Her Majesty's Court of Exchequer, and Sir Samuel Martin, Knight, Sir George William Wilshere Bramwell, Knight, Sir William Fry Channell, Knight, and Sir Gillery Pigott, Knight, Barons of the same Court, do hereby, in pursuance and execution of the power given them by the Crown Suits, &c. Act, 1865, s. 28, and of every or any other power or authority enabling them in this behalf, order and direct in manner following :—

[NOTE.—*The references to the Chancery Orders are to the official edition, published by Stevens and Norton, 1860.*]

RULE I.

Printing of Informations.

See p. 253.

1. *Consolidated Chancery Orders*, IX. 3, p. 37.—Information shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, in pica type, leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two and a half inches wide, and dates and sums occurring therein shall be expressed in figures instead of words. Every information shall be divided into paragraphs, numbered consecutively.

2. *Ib.* XI. 19, and p. 199, *Rule 4.*—*Ib.* p. 132.—The payment to be made by a defendant for such printed copies of the information as he requires shall be at the rate of one halfpenny per folio of 72 words.

RULE II.

Service of Copy of Information and Appearance.

See pp. 246, 257.

1. *Ib.* X. 3.—Where a defendant within the jurisdiction of the Court is served with the copy of an information in manner provided by the Crown Suits, &c. Act, 1865, he must appear thereto within eight days after the service of such copy.

2. *Ib.* X. 4.—Where any defendant, not appearing to be an infant or a person of weak or unsound mind, unable of himself to defend the suit, is, when within the jurisdiction of the Court, duly served with a copy of the information, in manner provided by the Crown Suits, &c. Act, 1865, and refuses or neglects to appear thereto within eight days after such service, the informant may, after the expiration of such eight days, and within three weeks from the time of such service, apply to the Queen's Remembrancer to enter an appearance for such defendant, and, no appearance having been entered, the Queen's Remembrancer

shall enter such appearance accordingly, upon being satisfied by affidavit that the copy of the information was duly served; and after the expiration of such three weeks, or after the time allowed to such defendant for appearing has expired, in any case in which the Queen's Remembrancer is not hereby required to enter such appearance, the informant may apply to the Court or a judge for leave to enter such appearance for such defendant, and the Court or judge being satisfied that the copy of the information was duly served, and that no appearance has been entered for such defendant, may, if it seem fit, order the same accordingly.

3. *Ib.* X. 5.—Any appearance entered at the instance of the informant for a defendant, who at the time of the entry thereof is an infant or a person of weak or unsound mind, unable of himself to defend the suit, shall be irregular and of no validity.

4. *Ib.* VII. 13.—Where, upon default made by a defendant in not appearing to or not answering an information, it appears to the Court or a judge that such defendant is an infant or a person of weak or unsound mind not so found by inquisition, so that he is unable of himself to defend the suit, the Court or a judge may, upon the application of the informant, order that some proper person be assigned guardian of such defendant, by whom he may appear to and answer or appear to or answer the information and defend the suit. But no such order shall be made unless it appears on the hearing of such application that a copy of the information was duly served in the manner provided by the Crown Suits, &c. Act, 1865, and that notice of such application was, after the expiration of the time allowed for appearing to or for answering the information, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such notice of the information, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service.

The practice as to the appointment of a guardian *ad litem* is stated to be as follows: The order appointing a guardian must be lodged in the King's Remembrancer's Department before or at the time of filing the infant's answer by guardian. Present a petition at Chambers (*quare*, to Chief Justice, formerly to Chief Baron) similar to that in Chancery, praying that A. B. may be appointed guardian and next friend to the infant to defend the suit. The infant, if able, must sign the petition, and proposed guardian must sign at foot of petition consenting to act. Affidavit verifying signatures of infant and guardian and proving "no adverse interest of guardian." Upon which, either (i) the judge will make an order directing that a rule be drawn up admitting the said A. B. to be such guardian, or (ii) the judge will indorse the petition "ordered as prayed," with his signature. Petition and affidavits to be filed in King's Remembrancer's Department, and a side bar rule drawn out thereon. If an order on the petition be drawn up at Chambers, it must be brought to the Department and annexed to the petition for the side bar rule to be drawn. It seems at law the judge makes an order directing a rule to be drawn up—in fact, two orders. Whether an order is drawn up in the Department or not must depend on the terms of the judge's order.

5. *Ib.* X. 6.—Where the Court or a judge is satisfied by sufficient evidence that any defendant has been within the jurisdiction of the Court at some time not more than two years before the information was filed, and that such defendant is out of the jurisdiction, or that upon inquiry at his usual place of abode (if he had any), or at any other place or places where at the time when the information was filed he might probably have been met with, he could not

be found, so as to be served with a copy of the information, and that in either case there is just ground to believe that such defendant has gone out of the jurisdiction, or otherwise absconded to avoid being served with such copy of the information or with other process, the Court or a judge may order that such defendant do appear at a certain day, to be named in the order, and a copy of such order, together with a notice to the effect set forth at the end of this clause, may within fourteen days after such order made be inserted in the "London Gazette," and be otherwise published, as the Court or a judge may direct; and where the defendant does not appear within the time limited by such order, or within such further time as the Court or a judge may appoint, then, on proof made of such publication of the order, the Court or a judge may order an appearance to be entered for the defendant, on the application of the informant.

"NOTICE.—A. B. Take notice, that if you do not appear, pursuant to the above order, the informant may enter an appearance for you, and the Court may afterwards grant to the informant such relief as he may appear to be entitled to on his own showing."

6. *Ib.* X. 7.—Where a person named as a defendant to an information is out of the jurisdiction of the Court—

- (1.) The Court or a judge, upon application supported by sufficient evidence in what place or country such defendant is or may probably be found, may order that a copy of the information, and, if an answer is required, a copy of the interrogatories, may be served on such defendant in such place or country, or within such limits, as the Court or judge shall think fit to direct.
- (2.) Such order shall limit a time after such service within which such defendant is to appear to the information, such time to depend on the place or country within which the copy of the information is to be served; and where an answer is required, such order shall also limit a time within which such defendant is to plead, answer, or demur, or obtain further time to make his defence to the information.
- (3.) At the time when such copy of the information shall be served, the informant shall also cause such defendant to be served with a copy of the order giving the informant leave to serve such copy of the information.
- (4.) And if upon the expiration of the time for appearing it be shown to the satisfaction of the Court or a judge that such defendant was duly served with such copy of the information, and with a copy of the order, the Court or judge may, upon the application of the informant, order an appearance to be entered for such defendant.

7. *Ib.* X. 9.—A defendant, notwithstanding that an appearance may have been entered for him by the informant, may afterwards enter an appearance for himself in the ordinary way, but such appearance by such defendant shall not affect any proceeding duly taken, or any right acquired by the informant under or after the appearance entered by him, or prejudice the informant's right to be allowed the costs of the first appearance.

8. *Ib.* III. 5.—Every party defending in person shall cause to be written or printed upon every demurrer, plea, answer, or other pleading or proceeding, and upon all instructions which he may leave at the Queen's Remembrancer's office for any appearance or other purpose, his name and place of residence, and also (if his place of residence shall be more than three miles from the Queen's

Remembrancer's office) another proper place (to be called his address for service), which shall not be more than three miles from the said office, where writs, notices, and other documents, proceedings, and written communications may be left for him.

RULE III.

Amendment of Informations.

See p. 242.

1. *Ib.* IX. 18.—Where in amending an information no addition or insertion of more than 180 words in any one place is made, the information may be amended by written alterations in the printed information which has been filed, and by written additions on paper to be interleaved therewith, if necessary, but in all other cases the amendment must be made by a reprint of the information.

See Ord. XXVIII. r. 8, applied by Ord. LXVIII. r. 2, which has the effect of altering "180 words," above, to "144 words."

2. The practice of amending a defendant's copy of the information shall, with respect to informations filed after these Rules come into operation, be abolished.

3. *Ib.* IX. 20.—A copy of an amended information, whether upon an amendment by a reprint or by such alterations and additions as mentioned in the first clause of this rule, shall be served upon the defendant or his solicitor, and such copy may be partly printed and partly written if the amendment is not made by a reprint; and in every case the copy to be served shall be first so marked by the proper officer of the Court as to indicate the filing of such amended information, and the date of the filing or amendment thereof.

4. *Ib.* IX. 21.—Where a defendant defends by a solicitor, service upon such solicitor of a copy of the amended information, whether wholly printed or partly printed and partly written, shall be good service on such defendant.

5. *Ib.* IX. 22.—Where a defendant defends in person, service at the address for service of such defendant of a copy of the amended information, whether wholly printed or partly printed and partly written, shall be good service on such defendant.

RULE IV.

Interrogatories.

See p. 254.

1. *Ib.* XI. 2.—Where the informant requires an answer to an information from any defendant or defendants thereto, the interrogatories for the examination of such defendant or defendants shall be filed within eight days after the time limited for the appearance of such defendant or defendants.

2. *Ib.* XI. 3.—After the expiration of eight days from the time limited for the appearance of any defendant, no interrogatories shall be filed for the examination of such defendant without the special leave of the Court or of a judge, granted upon hearing the parties.

3. *Ib.* XI. 4.—Where a defendant required to answer appears in person or by his solicitor within the time limited for that purpose by the rules of the Court, the informant shall, within eight days after the time allowed for such appearance, deliver to such defendant or to his solicitor a copy of the interrogatories so filed as aforesaid, or of such of them as the particular defendant is required to answer; and the copy so to be delivered shall be examined with the original by the clerks of the Queen's Remembrancer, and they, on finding that the same is properly written, shall mark the same as an office copy.

4. *Ib.* XI. 5.—Where a defendant to a suit does not appear in person or by his solicitor within the time allowed for that purpose by the rules of the Court, and the informant files interrogatories for his examination, the informant may deliver a copy of such interrogatories so examined and marked as aforesaid to such defendant, at any time after the time allowed to such defendant to appear, and before his appearance in person or by his own solicitor, or the informant may deliver a copy of such interrogatories so examined and marked as aforesaid to the defendant or his solicitor after the appearance of such defendant in person or by his solicitor, but within eight days after such appearance.

RULE V.

Times allowed in Procedure.

See pp. 242, 243, 258.

1. *Ib.* XXXVII. 3.—A defendant may demur alone to an information within twelve days after his appearance thereto, but not afterwards.

2. *Ib.* XXXVII. 4.—A defendant required to answer an information, whether original or amended, must put in his plea, answer, or demurrer thereto, not demurring alone, within twenty-eight days from the delivery to him or his solicitor of a copy of the interrogatories which he is required to answer, or within such further time as the Court or a judge may allow.

If he does not he is subject to the following liabilities:—

(1.) An attachment may be issued against him.

(2.) If the sheriff takes the defendant under the attachment, and accepts bail, and makes his return accordingly, the informant may, by motion of course, obtain an order directed to the tipstaff of Her Majesty's Court of Exchequer, to bring the defendant to the bar of the Court, and upon the defendant's being brought to the bar of the Court, the Court may, if it thinks fit, absolutely commit him to Whitecross Street Prison until he has put in his answer.

(3.) If the sheriff, under the attachment, arrests the defendant, and sends him to prison, or, finding him already in custody, detains him, and makes his return accordingly, the informant may, by motion of course, obtain a writ of habeas corpus to bring the defendant to the bar of the Court, and upon the defendant's being so brought to the bar of the Court, the Court may, if it thinks fit, absolutely commit him to Whitecross Street Prison until he has put in his answer.

(4.) The informant may file a traversing note, or proceed to have the information taken *pro confesso* against the defendant.

The committal would now probably be to Brixton Prison.

3. *Ib.* XXXVII. [5].—A defendant who is served with a copy of an information, whether original or amended, and is not required to answer the same, may, without any leave of the Court or a judge, put in a plea, answer, or demurrer, not demurring alone, within fourteen days after the expiration of the time within which he might, if required to answer, and appearing within the time limited for his appearance, have been served with interrogatories for his examination in answer to the information.

4. *Ib.* XXXVII. 6.—Where a defendant is ordered to answer amendments and exceptions together, he must put in his further answer and his answer to the amendments within fourteen days after he shall have been served with

interrogatories for his examination in answer to the amended information, or within such further time as the Court or judge may allow. If he does not he is subject to the same liabilities as are mentioned in the second clause of this rule.

5. The answer of a defendant shall be deemed sufficient—

- (1.) Where no exceptions for insufficiency are filed thereto within six weeks after the filing of such answer.
- (2.) Where exceptions being filed the informant does not set them down to be argued in the term next following the filing of such exceptions.
- (3.) Where a further answer is filed, and the whole exceptions are not set down to be argued in the term next following the filing of such further answer.

For the practice as to exceptions, see p. 252.

6. *Ib.* XXXIII. 2.—Unless the Court or a judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion and a day named in the notice for hearing the motion. And in the computation of such two clear days Sundays and other days in which the Queen's Remembrancer's office is closed shall not be reckoned.

See p. 254, and Ord. LXIV., applied by Ord. LXVIII. r. 2.

7. The times limited in this and the others of these Rules shall apply both to town and country causes, and in all cases not provided for by these Rules the times in all causes shall be the same as those heretofore allowed in town causes.

RULE VI.

Printing of Answers.

See p. 244.

1. *Chancery Order of 6th March, 1860.*—The practice of engrossing answers on parchment shall henceforth be discontinued, and a defendant (except as otherwise provided by the fifth clause of this rule) is to file his answer divided into paragraphs, numbered consecutively, and written bookwise upon paper of the same size and description as that on which informations are printed.

2. At the time when defendant files his answer he is to leave with the Queen's Remembrancer a fair copy thereof (without the schedules, if any, of the accounts or documents), and the clerks of the Queen's Remembrancer are to examine and correct such copy with the answer filed, and return it so examined, with a certificate thereon that it is correct and proper to be printed.

The King's Remembrancer's note is as follows: "June 4, 1866. On enquiring at the Record and Writ Office—Court of Chancery—I was told that no fee was taken in respect of the certificate to be made on the copy of the answer. The certificate is as follows: 'I hereby certify that the above is correct and proper to be printed.'"

3. A defendant is then to cause his answer to be printed from such certified copy on paper of the same size and description, and in the same type, style and manner, on and in which informations are required to be printed, and before the expiration of four days from the filing of his answer is to leave a printed copy thereof with the Queen's Remembrancer, with a written certificate thereon by the defendant's solicitor, or by the defendant if defending in person, that such print is a true copy of the answer so certified, and if such printed copy

shall not be so left, the defendant shall be subject to the same liabilities as if no answer had been filed.

4. At any time after the expiration of such four days the defendant, within forty-eight hours after the same shall have been demanded in writing, is to have ready for delivery to the informant an official and certified printed copy of the answer.

5. Notwithstanding the preceding clauses of this rule, a defendant is to be at liberty to swear to and file a printed answer.

A printed answer filed pursuant to this Rule in *A.-G. v. Brogden* (1870), not reported, containing interlineations in writing marked by the commissioner for oaths before whom the answer was sworn, was allowed. Contrast Rule VI. 11, below, as to written alterations and interlineations in copies of answers printed under Rule VI. 4.

6. On receiving from the informant a demand for an official and certified printed copy of the answer, the defendant is to get a printed copy thereof examined by the clerks of the Queen's Remembrancer with the answer as filed, and to stamp such copy with a stamp for 5s.; and the clerks of the Queen's Remembrancer, on finding that such copy is duly stamped and correct, are to certify thereon that the same is a correct copy, and to mark the same as an office copy.

7. Such copy is, on demand, to be delivered to the informant, who, on receipt thereof, is to pay to the defendant the amount of the stamp thereon, and at the rate of 4d. per folio for the same.

8. The informant is also to be entitled to demand and receive from the defendant any additional number of printed copies of his answer not exceeding ten, on payment for the same at the rate of one halfpenny per folio.

9. After all the defendants who are required to answer shall have filed their answers, a co-defendant is to be entitled to demand and receive from any other defendant any number of printed copies of his answer, not exceeding six, on payment for the same at the rate of one halfpenny per folio.

10. Office copies of schedules to answers of accounts or documents are to be obtained according to the practice now existing for obtaining office copies of answers.

11. The clerks of the Queen's Remembrancer are not to certify or mark any printed copy of an answer which has any alteration or interlineation in writing.

12. No costs are to be allowed for any written brief of an answer, unless the Court or a judge shall direct the allowance thereof.

13. The clauses of this rule, other than Clause 1, are not to apply to answers filed by defendants defending *in formā pauperis*.

RULE VII.

Taking Informations pro Confesso.

See p. 247.

1. *Consolidated Chancery Orders*, XXII.—Upon the execution of an attachment for want of answer against any defendant, or at any time within three weeks afterwards, the informant may cause such defendant to be served with a notice of motion to be made on some day in the following term, not less than fourteen days after the day of such service, that the information may be taken *pro confesso* against such defendant, and thereupon, unless such defendant has in the meantime put in his answer to the information, or obtained further time

to answer the same, the Court, if it so think fit, may order the information to be taken *pro confesso* against such defendant, either immediately or at such time, and upon such terms, and subject to such conditions, as under the circumstances of the case the Court shall think proper.

2. When any defendant, whether within or not within the jurisdiction of the Court, does not put in his answer in due time after appearance entered by or for him, and the informant is unable with due diligence to procure a writ of attachment, or any subsequent process for want of answer to be executed against such defendant by reason of his being out of the jurisdiction of the Court, or being concealed, or for any other cause, then such defendant shall, for the purpose of enabling the informant to obtain an order to take the information *pro confesso*, be deemed to have absconded to avoid or to have refused to obey the process of the Court.

3. Where any defendant who, under the second clause of this rule, may be deemed to have absconded to avoid or to have refused to obey the process of the Court appears in person or by his own solicitor, the informant may serve upon such defendant or his solicitor a notice that on a day in such notice named (being not less than fourteen days after the service of such notice) the Court will be moved that the information may be taken *pro confesso* against such defendant; and the informant must, upon the hearing of such motion, satisfy the Court that such defendant ought, under the provisions of the second clause of this rule, to be deemed to have absconded to avoid or to have refused to obey the process of the Court; and the Court, if so satisfied, and if an answer has not been filed, may, if it so think fit, order the information to be taken *pro confesso* against such defendant, either immediately or at such time or upon such further notice as under the circumstances of the case the Court may think proper.

4. Where any defendant who, under the second clause of this rule, may be deemed to have absconded to avoid or to have refused to obey the process of the Court, has had an appearance entered for him under the second, fifth, or sixth clause of Rule II., and does not afterwards appear in person or by his own solicitor, the informant may cause to be inserted in the "London Gazette" a notice that on a day in such notice named (being not less than four weeks after the first insertion of such notice in the "London Gazette") the Court will be moved that the information may be taken *pro confesso* against such defendant, and the informant must upon the hearing of such motion satisfy the Court that such defendant ought, under the provisions of the second clause of this rule, to be deemed to have absconded to avoid or to have refused to obey the process of the Court, and that such notice of motion has been inserted in the "London Gazette" at least once in every entire week (reckoned from Sunday morning to Saturday evening) which shall have elapsed between the time of the first insertion thereof and the time for which the said notice is given; and the Court, if so satisfied, and if an answer has not been filed, may, if it so think fit, order the information to be taken *pro confesso* against such defendant, either immediately or at such time, or upon such further notice, as under the circumstances of the case the Court may think proper.

5. Any defendant being in custody for want of his answer and submitting to have the information taken *pro confesso* against him, may apply to the Court upon motion, with notice to be served on the informant, to be discharged out of custody, and thereupon the Court may order the information to be taken *pro confesso* against such defendant, and may order him to be

discharged out of custody upon such terms as appear to be just, unless it appears, from the nature of the informant's case, or otherwise to the satisfaction of the Court, that justice cannot be done to the informant without discovery or further discovery from such defendant.

6. No cause in which an order is made that an information be taken *pro confesso* against a defendant shall be heard on the same day on which the order is made, but the cause shall be set down to be heard, and the Court, if it so think fit, may appoint a special day for the hearing thereof.

7. A defendant against whom an order to take an information *pro confesso* is made may appear at the hearing of the cause, and where he waives all objection to the order, but not otherwise, he may be heard to argue the case upon the merits as stated in the information.

8. Upon the hearing of a cause in which an information has been ordered to be taken *pro confesso*, such decree shall be made as to the Court shall seem just; and in the case of any defendant who has appeared at the hearing, and waived all objection to such order to take the information *pro confesso*, or against whom the order has been made after appearance by himself or his own solicitor, or upon notice served on him, or after the execution of a writ of attachment against him, the decree shall be absolute.

9. In pronouncing the decree the Court may, either upon the case stated in the information, or upon that case and a motion by the informant for the purpose, as the case may require, order a receiver of the real and personal estate of the defendant against whom the information has been ordered to be taken *pro confesso* to be appointed, with the usual directions, or direct a sequestration of such real and personal estate to be issued, and may (if it appear to be just) direct payment to be made out of such real or personal estate of such sum of money as at the hearing or any subsequent stage of the cause the informant shall appear to be entitled to.

10. A decree founded on an information taken *pro confesso* is to be entered as other decrees.

11. After a decree founded on an information taken *pro confesso* has been entered, an office copy thereof shall (unless the Court shall dispense with service thereof) be served on the defendant against whom the order to take the information *pro confesso* was made, or his solicitor; and where the decree is not absolute, under the eighth clause of this rule, such defendant or his solicitor shall be at the same time served with a notice to the effect that if such defendant desires permission to answer the informant's information, and set aside the decree, application for that purpose must be made to the Court within the time specified in the notice, or that otherwise such defendant will be absolutely excluded from making any such application.

12. Where such notice as is mentioned in the last preceding clause of this rule is to be served within the jurisdiction of the Court, the time therein specified for such application to be made by the defendant shall be fourteen clear days after the service of such notice, or in case the Court be not sitting at the expiration of such fourteen clear days, then on the first day of the term next following the expiration of such fourteen clear days; but where such notice is to be served out of the jurisdiction of the Court such time shall be specially appointed by the Court, on the *ex parte* application of the informant.

13. No proceeding shall be taken, and no receiver appointed under the decree, nor any sequestrator under any sequestration issued in pursuance thereof, shall take possession of or in any manner intermeddle with any part of the real or

personal estate of a defendant, and no other process shall issue to compel performance of the decree, without leave of the Court or a judge, to be obtained after notice served on such defendant or his solicitor, unless the Court or a judge shall dispense with such service.

14. Any defendant waiving all objection to take the information *pro confesso*, and submitting to pay such costs as the Court may direct, may before enrolment of the decree have the cause re-heard upon the merits stated in the information, the petition for re-hearing being signed by counsel as other petitions for re-hearing.

15. Where a decree is not absolute, under the eighth clause of this rule, the Court may order the same to be made absolute, on the motion of the informant made—

- (1.) After the expiration of three weeks from the service of a copy of the decree on a defendant, where the decree has been served within the jurisdiction.
- (2.) After the expiration of the time limited by the notice provided for by the eleventh clause of this rule, where the decree is served without the jurisdiction.
- (3.) After the expiration of three years from the date of the decree, where a defendant has not been served with a copy thereof.

And such order may be made either on the first hearing of such motion, or on the expiration of any further time which the Court may, on the hearing of such motion, allow to the defendant for moving for leave to answer the information.

16. Where the decree is not absolute, under the eighth clause, and has not been made absolute under the fifteenth clause of this rule, and the defendant has a case upon merits not appearing in the information, he may apply to the Court by motion, supported by an affidavit stating such case, and submitting to such terms with respect to costs and otherwise as the Court may think reasonable, for leave to answer the information; and the Court, if satisfied that such case is proper to be submitted to the judgment of the Court, may, if it think fit and upon such terms as seem just, vacate the enrolment (if any) of the decree, and permit such defendant to answer the information; and where permission is so given to put in an answer, leave may be given to file a separate replication to such answer, and issue may be joined, and witnesses examined, and such proceedings had as if the decree had not been made, and no proceedings against such defendant had been had in the cause.

17. The rights and liabilities of any defendant under a decree made upon an information taken *pro confesso* shall extend to the representatives of any deceased defendant, and to any persons claiming under any person who was defendant at the time when the decree was pronounced; and with reference to the altered state of parties and any new interests acquired, the Court may, upon motion served in such manner and supported by such evidence as under the circumstances of the case the Court may deem sufficient, permit such proceedings to be taken as the nature and circumstances of the case may require, for the purpose of having the decree (if absolute) duly executed, or for the purpose of having the matter of the decree (if not absolute) duly considered, and the right of the parties duly ascertained and determined.

RULE VIII.

Traversing Note.

See p. 258.

1. *Consolidated Chancery Orders*, XIII. 1.—After the expiration of the time allowed to a defendant to plead, answer, or demur (not demurring alone) to any information, whether original or amended before answer, which he has been required to answer, if such defendant has not filed any plea, answer, or demurrer, the informant may, if he think fit, file a note at the Queen's Remembrancer's office to the following effect:—"The informant intends to proceed with the cause as if the defendant had filed an answer traversing the case made by the information."

2. *Ib.* 2.—After the expiration of the time allowed to a defendant to plead, answer, or demur (not demurring alone) to an information amended after answer, which he has been required to answer, if such defendant has not filed any plea, answer, or demurrer, the informant may, if he think fit, file at the Queen's Remembrancer's office a note to the following effect:—"The informant intends to proceed with the cause as if the defendant had filed an answer traversing the allegations introduced into the information by amendment."

3. *Ib.* 3.—After the expiration of the time allowed to a defendant to put in his further answer to any information, if such defendant shall not have put in any further answer, the informant may, if he think fit, file at the Queen's Remembrancer's office a note to the following effect:—"The informant intends to proceed with the cause as if the defendant had filed a further answer traversing the allegations in the information whereon the exceptions are founded."

4. *Ib.* 4.—Where a demurrer or plea to the whole information is overruled, the informant, if he does not require an answer, may, if he think fit, immediately file his note in manner directed by the first or second clause of this rule, as the case may require, and with the same effect, unless the Court, upon overruling such demurrer or plea, gives time to the defendant to plead, answer, or demur, and in such case, if the defendant does not file any plea, answer, or demurrer, within the time so allowed by the Court, the informant, if he does not then require an answer, may, if he think fit, on the expiration of such time, file such note.

5. *Ib.* 5.—A traversing note having been filed, a copy thereof shall be served on the defendant against whom the same was filed.

6. *Ib.* 6.—The filing of a traversing note, and due service of a copy thereof, shall have the same effect as if the defendant against whom such note is filed had filed a full answer, or further answer, traversing the whole information, or those parts of it to which the note relates, on the day on which the note was filed.

7. A defendant, after service of the copy of the traversing note filed against him as aforesaid, shall not plead, answer, or demur to the information, or put in any further answer thereto, without the special leave of the Court or a judge, and the cause shall stand in the same situation as if such defendant had filed a full answer or further answer to the information on the day on which the note was filed.

RULE IX.

Replication and Joining Issue.

See p. 256.

1. *Ib.* XVII. 2.—No subpoena to rejoin shall hereafter be issued, and only one replication shall be filed in each cause unless the Court or a judge shall otherwise direct, and the replication shall be in the form set forth at the end of this rule, or as near thereto as circumstances admit, and upon the filing of such replication the cause shall be deemed to be completely at issue, and each defendant may, without any rule or order, proceed to verify his case by evidence, and the informant may in like manner proceed to verify his case by evidence, as soon as notice of the replication having been filed has been duly served on all the defendants who have filed an answer or plea, or against whom a traversing note has been filed, or who have not been required to answer and have not answered the information.

Form of Replication.

Between informant and defendant.

The informant hereby joins issue with the defendants [*all the defendants who have answered or pleaded, or against whom a traversing note has been filed, or who have not been required to answer and have not answered the information*], and will hear the cause on information and answer against the defendants [*all the defendants against whom the cause is to be heard on information and answer*], and on the order to take the information *pro confesso* against the defendants [*all the defendants against whom the information is to be taken pro confesso*].

RULE X.

Evidence.

See p. 250, and Ord. XXXVIII., applied by Ord. LXVIII. r. 2.

1. *Consolidated Chancery Orders, VIII.*, 15 & 16 *Vict. c. 26, s. 28*.—The mode of examining witnesses now in force, and all the practice of the Court in relation thereto, so far as the same are inconsistent with these rules, shall, from and after the time appointed for these rules to come into operation, be abolished: provided always that the Court or a judge may, if it shall seem fit, order any particular witness or witnesses within the jurisdiction of the Court, or any witness or witnesses out of the jurisdiction of the Court, to be examined upon interrogatories in the mode now in force, or in such other mode as the Court or a judge may direct; and that with respect to such witness or witnesses the practice of the Court in relation to the examination of witnesses shall continue in force, save only so far as the same may be varied by any order of the Court or a judge in reference to any particular case.

15 & 16 *Vict. c. 26*, is a misprint for 15 & 16 *Vict. c. 86*.

2. *Chancery Order, 5th February, 1861, Rule 3*.—The informant or any defendant may, at any time within fourteen days after issue has been joined in a cause, apply to a judge by a summons to be served on the opposite party for an order that the evidence as to any facts or issues (such facts and issues to be distinctly and concisely specified in the summons) may be taken *vivâ voce* at the hearing of the cause, and the judge may, if he shall so think fit, make an order

that the evidence as to such facts and issues, or any of them, shall be taken *vivâ voce* at the hearing accordingly; and the facts and issues as to which any such orders shall direct that the evidence shall be taken *vivâ voce* at the hearing shall be distinctly and concisely specified in such order. And where any such order shall have been made, the examination in chief, as well as the cross-examination and re-examination, shall be taken before the Court at the hearing as to the facts and issues specified in such order; and no affidavit shall be admissible at the hearing in respect of any fact or issue which shall be included in any such order as aforesaid.

3. Except as to facts or issues included in any order directing evidence to be taken *vivâ voce* at the hearing under the first [*quære*, second] clause of this rule, each party shall be at liberty to verify his case by affidavit.

4. A judge may, if he think fit, upon the application of either party, by summons served on the opposite party, order that any particular witness or witnesses shall be examined orally before an examiner specially appointed by the judge for that purpose, whether the evidence of such witness or witnesses relate to any fact and issues specified in an order under the second clause of this rule or not; and witnesses so examined shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted as nearly as may be in the mode now in use in Courts of Common Law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause, but subject to such directions as may be given by the judge in any particular case.

5. *Chancery Order*, 5th February, 1861, Rule 5; *Exchequer Rules*, 1860, 119.—The evidence in chief on both sides in any cause taken before the hearing, to be used at the hearing (including the examination, cross-examination and re-examination of any witness before a special examiner, under any such order as mentioned in the last preceding clause of this rule), shall be closed within eight weeks after issue joined, unless the time is enlarged by special order; and no evidence subsequently taken shall be admissible without special leave of the Court or a judge.

6. *Consolidated Chancery Orders*, XVIII. 1; and *Exchequer Rules*, 1860, 121.—All affidavits made in a cause, whether for the purpose of being used at the hearing or otherwise, shall be taken and expressed in the first person of the deponent, and all affidavits shall be filed in the Queen's Remembrancer's office; and affidavits to be used at the hearing of a cause shall be so filed before the time of closing evidence.

7. 15 & 16 Vict. c. 86, s. 37.—Every affidavit in a cause shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject.

8. *Consolidated Chancery Orders*, XIX. 12.—No affidavit filed before issue joined in any cause shall, without special leave of the Court or judge, be received at the hearing thereof, unless within one month after issue joined notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.

9. *Chancery Orders*, 5th February, 1861, Rule 19.—Where any party has filed an affidavit intended to be used at the hearing of a cause, any opposite party desiring to cross-examine the witness who has made such affidavit may serve upon the party by whom such affidavit has been filed a notice in writing requiring the production of the witness for cross-examination before the Court at the hearing, such notice to be served within fourteen days next after closing

the evidence; but a judge, on the application of the party filing such affidavit, by summons served on the opposite party, may, if the circumstances of the case in his opinion render it expedient, make an order giving the party filing such affidavit liberty to produce such witness for cross-examination at a time named in such order, before an examiner specially appointed by the judge, instead of at the hearing. Unless such witness is produced accordingly at the hearing, or, if such order as last aforesaid has been made, then at the time named in such order, such affidavit shall not be used as evidence without the leave of the Court. The party producing such witness shall be entitled to demand the expenses thereof in the first instance from the party requiring such production, but such expenses shall ultimately be borne as the Court shall direct. The witness, when produced and cross-examined, shall be subject to oral re-examination on behalf of the party by whom his affidavit was filed.

10. *Chancery Orders*, 5th February, 1861, Rule 20.—Where any such notice as is mentioned in the last preceding clause is given, the party to whom it is given shall be entitled to compel the attendance of the witness for cross-examination, in the same way as he might compel the attendance of a witness to be examined on his behalf.

11. The attendance of a witness, whether before the Court or a special examiner, may be compelled, either by an order of the judge, in the same manner as in Courts of Common Law, or by a *subpœna ad testificandum*, or *subpœna duces tecum*, which may be in the form mentioned at the foot of this rule, with such variations as circumstances may require.

Quære whether a subpœna can be issued without production of the judge's order authorising *vivâ voce* evidence under Rule X. 2, 4, or 9.

12. 15 & 16 *Vict. c. 86, s. 34*.—When the examination or cross-examination of witnesses before a special examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Queen's Remembrancer's office, to be there filed.

13. *Chancery Order*, 5th February, 1861, Rule 22.—Any party to a cause requiring the attendance of any person before the Court for the purpose of being examined shall give to the opposite party forty-eight hours' notice at least of his intention to examine such witness or person, such notice to contain the name and description of the person, unless the Court or a judge shall in any case think fit to dispense with such notice.

14. 15 & 16 *Vict. c. 86, s. 29*.—Upon the hearing of any cause, the Court, if it shall see fit to do so, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party to be paid in such manner as it may think fit.

15. *Ib.* 41.—In cases where it shall be necessary for any party to go into evidence subsequently to the hearing of a cause, such evidence may be taken by affidavit, but subject to any special directions which may be given by the Court or a judge in any particular case.

16. *Chancery Order*, 6th March, 1860.—Affidavits to be filed in the office of the Queen's Remembrancer, whether for the purpose of being used on an interlocutory application, or at the hearing of a cause, or otherwise, are to be written on foolscap paper bookwise; provided nevertheless, that the Queen's Remembrancer may receive and file affidavits written otherwise than as here

directed, if in his opinion the circumstances of the case render such reception and filing desirable or necessary.

17. 15 & 16 *Vict. c. 86, s. 59*.—Upon applications by motion to the Court in any suit depending therein for an injunction, or to dissolve an injunction, the answer of the defendant shall, for the purpose of evidence on such motions, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto.

See p. 253.

Form of Subpœna referred to in Clause 11 of the preceding Rule.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To greeting. We command you [and every of you], That all excuses ceasing, you do personally be and appear before Our trusty and well-beloved the Barons of Our Court of Exchequer at Westminster, [*the King's Bench Division of Our High Court of Justice*] at such times as the bearer hereof shall by notice in writing appoint, [*or* an examiner specially appointed for the examination of witnesses in Our Exchequer [*High Court of Justice*], at such times and places as the bearer hereof shall by notice in writing appoint], to testify the truth according to your knowledge in a certain cause depending in Our said Court of Exchequer [*High Court of Justice*] wherein is informant [and plaintiff *or* and others are plaintiffs], and [and others *or* another] is [*or* are] defendant [*or* defendants] on the part of the [and that you then and there bring with you and produce], and hereof fail not at your peril.

Witness, &c.

The ordinary form of subpœna is now used, apparently without authority.

RULE XI.

Setting down for Hearing.

See p. 259.

1. *Consolidated Chancery Orders*, XXI. 1.—Within eight weeks after the evidence has been closed, the informant is to set down the cause, and obtain and serve on the solicitor of the defendant, or upon the defendant if defending in person, a subpœna to hear judgment. If he does not, any defendant, after the expiration of such eight weeks, may set the cause down, and may obtain a subpœna to hear judgment, and serve the same on the solicitor of the informant, and on the other defendants, if any.

2. *Ib.* 5.—A subpœna to hear judgment must be served at least ten days before the return thereof.

3. A subpœna to hear judgment shall be in the form next hereinafter set forth, with such variations as circumstances may require.

Subpœna to hear Judgment.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To greeting. We command you [and every of you] that you appear before the Chancellor and Barons of Our Exchequer at Westminster [*the King's Bench Division of Our High Court of Justice*] on the day of or whenever thereafter a certain cause

now depending in Our Court of Exchequer at Westminster [*High Court of Justice*] wherein is informant [and plaintiff], and is defendant [*or, are defendants*], shall come on for hearing, then and there to receive and abide by such judgment and decree as shall then or thereafter be pronounced, upon pain of judgment being pronounced against you by default.

Witness at Westminster, the day of in the year of our Lord one thousand eight hundred and sixty .

RULE XII.

Decrees, Rules, and Orders.

See p. 257.

1. *Ib.* XXIII. 2.—It shall not be necessary in drawing up any decree to recite of the pleadings or any previous proceeding beyond the prayer of the information, but it shall be sufficient to refer thereto; save only that in cases involving special circumstances as the Court or a judge shall direct, or the Queen's Remembrancer shall in his discretion think fit, such short recitals may be inserted as may be necessary to show the grounds on which the decree is granted.

2. *Rules of 26th November, 1861.*—All rules at side bar, and orders on motion of course, shall bear date on the day they are drawn up.

3. *Rule of 22nd June, 1860* [113].—All rules upon the sheriffs of London or Middlesex to return writs shall be four-day rules, and upon other sheriffs eight-day rules.

4. *Rule 114.*—The writ heretofore used calling upon a party to perform a rule, order, or decree shall not be necessary or used to bring such party into contempt, but the serving of a copy of the rule, order, or decree, or the copy of any office copy of such rule, order, or decree shall be deemed sufficient service.

5. *Rule 116.*—It shall not, except in cases of attachment, be necessary to the regular service of a rule, order, or decree, that the original or office copy thereof should be shown, unless sight thereof be demanded.

See p. 246.

RULE XIII.

Revivor and Supplement.

See pp. 242, 256.

1. Where an order under the Crown Suits, &c. Act, 1865, to the effect of an order to revive or of a supplemental decree has been obtained, the first seven clauses of the second of these rules shall be applicable in the same manner as if such order were an information filed on the day on which such order is obtained, and to which the persons who would be defendants to an information of revivor or supplemental information were defendants.

2. *Consolidated Chancery Orders, XXXII.* 1.—Any person under no disability, or under the disability of coverture only, who may be served with any such order as mentioned in the last preceding clause, may apply to the Court or a judge to discharge such order within twelve days after such service.

EXCHEQUER RULES, 1866.

3. *Ib.*—Any person under any disability other than coverture who may be served with any such order as last aforesaid, may apply to the Court or a judge to discharge such order within twelve days after the appointment of a guardian or guardians *ad litem* for such person, and until such period of twelve days shall have expired such order shall be of no effect as against such person.

4. *Ib.* 2.—Where the informant in any cause which is not in such a state as to allow of an amendment being made in the information, desires to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue, by filing in the Queen's Remembrancer's office a statement, either written or printed, to be annexed to the information, and such proceedings by way of answer, evidence, and otherwise shall be had and taken upon the statement so filed as if the same were embodied in a supplemental information.

RULE XIV.

Written Pleadings, &c.

1. *Chancery Order, 6th March, 1860.*—Pleas, demurrers, interrogatories, traversing notes, replications, supplemental statements, exceptions, and certificates, to be filed in the office of the Queen's Remembrancer are to be written on paper of the same description and size as that on which informations are printed.

RULE XV.

Computations of Time.

See pp. 258, 763, 764, and Ord. LXIV., applied by Ord. LXVIII. r. 2.

1. *Revenue side Rule 61.*—In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the Court, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

2. *Rule 62.*—Christmas Day, and the three following days, and the days between the Thursday next before and the Wednesday next after Easter Day, shall not be reckoned or included in the time allowed for any proceeding.

3. The period from the 10th day of August to the 24th day of October (both inclusive) shall be excluded in reckoning the time allowed for pleading, answering, or demurring to an information, and for filing exceptions to answers.

RULE XVI.

Payment of Money into Court.

See note to Rule 132, p. 773.

1. *Exchequer Rules of 1860, 132, 133, 134.*—Any party directed by any decree or order of the Court or a judge to pay money into Court, must apply at the office of the Queen's Remembrancer for a "direction" so to do, which direction must be taken to the Bank of England, and the money there paid in. After payment, the receipt obtained from the Bank of England must be filed at the Queen's Remembrancer's office.

2. If the money is to be invested, paid out, or otherwise disposed of, an order of the Court or a judge must be obtained for that purpose, upon notice to the opposite party.

3. The orders relating to the matters mentioned in this rule are to be drawn up in the Queen's Remembrancer's office.

RULE XVII.

Recognisances.

See pp. 756, 764.

1. *Exchequer Rules* of 1860, 68, 71, 72.—All recognisances, if taken and acknowledged in town, are to be taken and acknowledged before a judge; and if a recognisance be taken and acknowledged in the country, the same may be taken and acknowledged before a commissioner for taking special bail in the Exchequer, and in the latter case an affidavit of caption must be made and filed.

2. No enrolment of any recognisances shall be necessary, but the same shall be filed in the Queen's Remembrancer's office.

3. All recognisances are to be prepared on parchment by the respective parties entering into the same.

RULE XVIII.

Issuing Writs.

1. *Rules of Revenue Side*, 1860 [1].—All writs in suits shall be prepared by the solicitor of the department, or by the solicitor suing out the same, and the name of the solicitor of the department, together with the name of the department, or the name and address of such other solicitor, shall be indorsed on such writ; and every such writ shall before the issuing thereof be sealed at the Queen's Remembrancer's office, and a *præcipe* thereof left at the said offices; and thereupon an entry of every such writ, together with the date of sealing and the name of the solicitor suing out the same, shall be made in a book to be kept at the Queen's Remembrancer's office for that purpose; and all writs shall be tested of the day, month, and year, when issued, and conclude without any other words.

See p. 259, and Ord. II. r. 8, applied by Ord. LXVIII. r. 2A.

RULE XIX.

Distringas.

A writ of *distringas* on behalf of Her Majesty's Attorney-General, or of the Attorney-General of the Prince of Wales and Duke of Cornwall, to restrain the transfer of stock transferable at the Bank of England, or the payments of the dividends thereon, shall continue to be issuable from the office of the Queen's Remembrancer in the form heretofore made, but concluding with the date of the day, month, and year of issue only.

See p. 249.

RULE XX.

Power of Court as to Time.

1. Any power which the Court or a judge may now possess to enlarge or abridge the time for doing any act or taking any proceeding, upon such (if any) terms as the justice of the case may require, shall not be affected by these orders.

See p. 258, and Ord. LXIV. r. 7, applied by Ord. LXVIII. r. 2.

EXCHEQUER RULES, 1866.

RULE XXI.

Costs.

See p. 247, and notes on p. 766; and Ord. LXV., applied by Ord. LXVIII. r. 2.

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the schedule hereto, unless the Court shall make order to the contrary as to all or any of the parties.

2. *Exchequer Rules* of 1860, 81, 82, 86.—Where costs are to be taxed, one day's notice of taxing costs, together with a copy of the bill of costs, shall be given to the solicitor of the party whose costs are to be taxed, by the other party or his solicitor.

3. Where costs are directed to be paid to the Crown, a certificate shall be granted by the Queen's Remembrancer of the costs allowed, and on default of payment the solicitor of the department may sue out a subpoena for the payment of such costs, and on an affidavit of service thereof, and demand made, and non-payment, an attachment may be granted.

4. A subpoena for costs shall be in the form set forth at the foot of this rule, with such variations as circumstances may require.

Subpœna for Costs.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To greeting. We command you [and every of you], that you pay or cause to be paid immediately after the service of this writ to or the bearer of these presents, £ costs in a cause wherein is informant [and plaintiff] and [and another, or others] is defendant [or, are defendants], by Our Court of Exchequer [*High Court of Justice*] adjudged to be paid by you the said under pain of an attachment issuing against your person, and such process for contempt as the said Court shall award in default of such payment.

Witness, &c.

RULE XXII.

Appointments.

22nd June, 1860, *Rule* 139.—On every appointment made by the Queen's Remembrancer, the party on whom the same shall be served shall attend without waiting for a second appointment, or in default thereof the Queen's Remembrancer may proceed *ex parte* on the first appointment.

See p. 254.

RULE XXIII.

Commencement of Rules.

1. These rules shall take effect and come into operation on the 16th day of April, 1866, but nothing therein contained shall apply to any suit commenced by information filed before that day, unless the Court or a judge shall on hearing the parties so direct.

RULE XXIV.

Interpretation.

See pp. 248, 255.

1. In the preceding rules the following words (that is to say), "the Court," "information," "suit," and "cause," have the meanings mentioned in the Crown Suits, &c. Act, 1865, s. 6; and the term "a judge" means any judge of one of Her Majesty's Superior Courts of Law at Westminster transacting business out of Court.

2. In the preceding rules the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction (that is to say):—

- (1.) Words importing the singular number include the plural number, and words importing the plural number include the singular number.
- (2.) Words importing the masculine gender include females.
- (3.) The word "party" or "parties" includes a body politic or corporate, and also includes Her Majesty's Attorney-General, or the Attorney-General of the Prince of Wales and Duke of Cornwall, as the case may require.
- (4.) The word "affidavit" includes affirmation.

Fred. Pollock.

W. F. Channell.

G. Bramwell.

G. Pigott.

Samuel Martin.

March 14, 1866.

SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

Instructions.

	£	s.	d.
For special cases, answers, examinations, demurrers, pleas, and exceptions	0	13	4
For informations	2	2	0
For amended or supplemental information	0	13	4
For brief for moving for injunction.....	1	1	0
For interrogatories for examination of parties or witnesses.....	0	13	4
For special petitions.....	0	13	4
For special affidavits	0	6	8
For brief in suit by information on cause coming on for hearing on service of subpœna to hear judgment	1	1	0
To defend proceedings commenced by information	0	13	4
For instructions for order to revive or add parties.....	0	13	4

As to informations and answers, affidavits and petitions, in lieu of the fixed fees for instructions for and for drawing, the Queen's Remembrancer is to be at liberty to take into his consideration the special circumstances of each case, and at his discretion to make such further allowance as shall appear to him to be just.

EXCHEQUER RULES, 1866.

The Preparation of Pleadings and other Documents.

(The folio to be seventy-two words, and the sheet ten folios.)	£	s.	d.
For drawing informations, answers, pleas, demurrers, exceptions, interrogatories, and affidavits, per folio	0	1	0
For ingrossing, per folio	0	0	4
For drawing statements and other documents for the judge's chambers or Queen's Remembrancer, when required, including the fair copy thereof to leave in chambers, per folio	0	1	0
For examining and correcting the proof of an information or answer, per folio	0	0	2
For revising the print of an answer before swearing or filing, per folio	0	0	2
For drawing special notice of motion	0	5	0
Or, per folio	0	1	0
For drawing such observations for counsel to accompany brief as may be necessary and proper, per sheet	0	6	8
For drawing the brief on further consideration, per sheet	0	6	8
For preparing and filing replication.....	0	10	0
For drawing statement on which counsel to move for order to revive or add parties, and copy	0	10	0
Or, according to circumstances, at per sheet	0	6	8
For drawing petition to revive, at per folio.....	0	1	0
For drawing and copying certificate to appoint guardians <i>ad litem</i> ...	0	6	8
For amending each copy of an information to serve where no reprint.	0	13	4
For amending each brief information where no reprint	0	13	4
For drawing bills of costs, including the copy for the Queen's Remembrancer's office, per folio	0	0	8

The fee for drawing a document in all cases includes a copy, if required, for the use of the solicitor or client, or for the settlement of counsel.

Perusals.

For perusing the print of an information by the defendant's solicitors.	1	1	0
If exceeding sixty folios, at per folio	0	0	4
For perusing the print of an amended information	0	13	4
If amendments exceeding forty folios, at per folio.....	0	0	4
For perusing an amended information when amended in writing	0	6	8
If amendments exceeding twenty folios, at per folio	0	0	4
The solicitor of the party answering interrogatories, for perusing interrogatories	0	13	4
If exceeding forty folios, at per folio	0	0	4
For perusing an answer	0	13	4
If exceeding forty folios, at per folio	0	0	4
For perusing an examination, at per folio	0	0	4
For perusing all special affidavits filed by an opposing party, at per folio	0	0	4
For perusing copy supplemental statement under Crown Suits Act ...	0	13	4
For perusing copy order to revive.....	0	13	4

Copies.

Subject to the foregoing regulations as to charges for copies, copies of all documents are to be at the rate of per folio 0 0 4

	£	s.	d.
Or per sheet of ten folios at	0	3	4

Having regard to the preceding fees for perusal, the fee for abbreviating is to cease, and no close copies are now to be allowed as of course, but the allowance is to depend on the propriety of making the copy, which in each case is to be shown and considered.

For each copy of a summons to serve	0	2	0
For each copy of a notice of motion, order, or certificate to serve	0	1	0
Or at per folio	0	0	4

Attendances.

For attending on the Queen's Remembrancer's warrant	0	6	8
Or according to the circumstances, not to exceed per diem	2	2	0
For attending each counsel with his brief, case, or abstract, in a suit or other proceeding in this Court	0	6	8
For the like, where the fee amounts to five guineas	0	13	4
Where it amounts to twenty guineas	1	1	0
Where it amounts to forty guineas or upwards	2	2	0
For attending to present special petition, and for same answered	0	6	8
For attending on counsel and Court on motion of course, and for order	0	13	4
For attending on the day in which a cause or petition stands appointed for hearing, or for which notice of motion has been given	0	10	0
For attending when heard	1	1	0
Or according to circumstances not to exceed per diem	2	2	0
For attending the Court on every special motion when made	0	13	4
Or according to circumstances, not to exceed	1	1	0
For attending on motion for or to discharge order for injunction or other matter when heard, per diem	0	13	4
Or according to circumstances, not to exceed	1	1	0
For attending to get answer or special affidavit sworn	0	6	8
For attending examiner to procure appointment to examine witnesses	0	6	8
For attending the examination of witnesses before examiner	0	13	4
Or according to circumstances, not to exceed per diem	2	2	0
But if without counsel the fee may, at the Queen's Remembrancer's discretion, be increased to	3	3	0
For attending to settle and afterwards to read over the engrossment of an answer or examination	0	13	4
If the same exceed twenty folios and under fifty folios	1	1	0
And for each additional thirty folios	0	6	8
For attending to insert an advertisement in Gazette	0	6	8
For entering caveat with the Queen's Remembrancer	0	6	8
For attending to procure certificate of a caveat	0	6	8
For attending Queen's Remembrancer to certify abatement or settlement of suit, and to have same so marked in the cause book	0	6	8
For attending the printer with an information or answer to be printed	0	6	8
For attending to get copies of information or interrogatories marked for service	0	6	8
For attending to take instructions to appear, and to enter the appearance of one or more defendants, not exceeding three	0	6	8
If exceeding three, for every additional number not exceeding three	0	6	8

The solicitor of the party filing an answer, for his attendance on the Queen's Remembrancer with and for the written and printed copies of an answer, and for certifying.....	£	s.	d.
	0	13	4
For the informant, or party having the conduct of the order, attending the Queen's Remembrancer with briefs and papers to bespeak minutes or order, not being an order of course	0	6	8
For ditto, for preparing list of evidence read, but only when required by the Queen's Remembrancer and certified by him	0	6	8
Or according to length, at per folio	0	1	0
Attending to settle the draft of any decree or order	0	13	4
Or, at the Queen's Remembrancer's discretion, not to exceed	2	2	0

In case the Queen's Remembrancer shall certify that a special allowance ought to be made in respect of any unusual difficulty in settling an order, he is to consider the same, and make such allowance to all or any of the parties as to him shall seem just.

For attending to procure certificate of pleadings	0	6	8
For attending to give consent to take answer without oath, and for other necessary or proper consent, of a like nature	0	6	8
For attending to procure such consents	0	6	8
For attendances in consultation or in conference with counsel	0	13	4
For attending Court on appointment of a guardian <i>ad litem</i>	0	13	4

Writs.

For every writ of <i>subpœna duces tecum</i>	0	6	8
For a writ or writs of <i>subpœna</i> other than <i>subpœna duces tecum</i> , if the number of names therein shall not exceed three	0	6	8
If exceeding three names, for every additional number not exceeding three	0	6	8
For preparing every other writing without order	0	6	8
For every writ under order, except special injunction	0	13	4
For special injunction, including engrossment	1	0	0
Or per folio.....	0	1	4

Notices and Services.

For service of a notice of motion, exclusive of copy	0	2	6
For notice to a solicitor of appearance, answer, demurrer, plea, amendment, and replication	0	2	6
For notice of filing affidavits or set of affidavits filed, or which ought properly to have been filed together, to be read in Court.....	0	2	6
For notice of appointment or copy warrant for settling and passing decrees or orders before the Queen's Remembrancer	0	2	6
For copy and service of a warrant on a solicitor.....	0	2	6
For service of a judge's summons, exclusive of the copy.....	0	2	6
For service of a petition	0	2	6
For judge's summons, copy and service	0	5	6
For service of an order, exclusive of the copy.....	0	2	6
For other necessary or proper notice.	0	2	6

For services of a party or witness, such reasonable charges and expenses as may be properly incurred, according to distance, or by the employment of an agent.

Oaths and Exhibits.

	£	s.	d.
To the commissioner for oath in London according to statute	0	1	6
In the country	0	2	6
To the solicitor for preparing each exhibit in town and country.....	0	1	0
The commissioner, for making each exhibit	0	1	0

Term Fee.

For a term fee, in all causes, for every term in which a proceeding by the party shall take place	0	10	0
And for letters, per term	0	5	0
In country agency causes the further fee for letters of.....	0	6	8
Where no proceeding is taken which carries a term fee, a charge for letters may be allowed, if the circumstances shall require it.			
For any work or labour properly performed, and not herein provided for, such allowances are to be made as heretofore.			

TREASURY SOLICITOR RULES, 1877.

RULES, DATED APRIL 26TH, 1877, TO BE OBSERVED WITH RESPECT TO MONEYS AND SECURITIES COMING INTO THE HANDS OF THE SOLICITOR TO THE TREASURY, IN THE ADMINISTRATION OF ESTATES ON BEHALF OF THE CROWN, UNDER THE PROVISIONS OF THE TREASURY SOLICITOR ACT, 1876.

1. All Government securities received by or vested in the Treasury Solicitor under the provisions of the above-mentioned Act shall be carried to a public account in the books of the Bank of England, in the names of the Treasury Solicitor and the Assistant Paymaster-General, for the time being, to be called "The Crown's Nominee Securities Account."

The securities standing to the credit of this account shall be held by the said officers, subject to the specific directions of the Treasury.

2. All other securities coming into the hands of the Treasury Solicitor under the said Act shall be converted into money.

3. All moneys received by the Treasury Solicitor under the provisions of the said Act, and all moneys arising from the sale of any of the before-mentioned securities, or from dividends thereon, shall be paid to the cash account of the Paymaster-General at the Bank of England.

4. The Paymaster-General shall open cash accounts in his books, to be called, respectively, "The Crown's Nominee Reserve Account," and "The Crown's Nominee Current Account."

5. All moneys received by the Paymaster-General under Rule 3 shall be carried by him to the credit of the Crown's Nominee Reserve Account.

The payments to be made out of this account shall be as follows, viz. :—

- (a) Payments for securities purchased (if any) for the credit of the Crown's Nominee Securities Account; and
- (b) Payments to the Exchequer on account of surplus moneys not required for the purposes of the account (as provided in sub-sect. 2 of sect. 4 of the Act).

TREASURY SOLICITOR RULES, 1877.

From this account will also be transferred to the Crown's Nominee Current Account such sums as may from time to time be required to meet other payments.

All payments and transfers from the Crown's Nominee Reserve Account are to be made upon the directions in each case of the Treasury.

6. All sums payable in respect of the administration of estates by the Treasury Solicitor, as Crown's Nominee (and not herein otherwise provided for), including costs and other expenses, and all grants of money out of the proceeds of such estates shall be paid out of the Crown's Nominee Current Account, by orders upon the Paymaster-General, to be jointly signed by the Solicitor, or by one of the Assistant Solicitors, and the clerk in charge of the accounts, or, in his absence, by the person who may be deputed to act for him.

The transfers to the credit of this account to meet these payments (as provided in Rule 5) will be made from time to time upon the Treasury Solicitor's written application to the Treasury, accompanied by a statement of the amount of the balance of the account.

7. On or before the 31st March in every year the Treasury Solicitor shall prepare, for presentation to Parliament (pursuant to section 4 of the Act), an abstract account, in a form to be approved by the Treasury, showing the receipts and payments of the Treasury Solicitor under the said Act in the year ended the 31st December next preceding, and specifying in particular:—

- (a) The total amount of moneys and securities received in respect of estates coming under the administration of the Crown's nominee.
- (b) The total payments thereout for debts due from such estates, and for costs and expenses.
- (c) The total payments on account of grants made under Royal Warrants, or the directions of the Treasury.
- (d) The total payments to the Exchequer on account of the Crown's share of estates.
- (e) The balances at the commencement and close of the year.

Also, a statement showing the amounts transferred in the year from the accounts of the several estates to the account of the Crown's share; the payments or transfers chargeable to the last-mentioned account; and the balances of the same.

Lastly, a balance-sheet, showing the liabilities and assets of the Crown's Nominee Account at the close of the year.

8. The said account, &c. shall be examined or audited by such person as the Treasury shall from time to time nominate for that duty.

9. On or before the 31st March in every year, the Treasury Solicitor shall make a report to the Treasury of the amounts of all moneys or securities granted to any person or persons which, on the 31st December next preceding, shall have remained unclaimed for a period of three years and upwards.

Treasury,
26th April, 1877.

ESCHEAT PROCEDURE RULES, 1889.

MADE, WITH THE ASSENT OF THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY, PURSUANT TO THE ESCHEAT (PROCEDURE) ACT, 1887. (50 & 51 VICT. c. 53.)

1. In these rules—

“The Commissioners” means the person or persons appointed as commissioner or commissioners by any Commission under the Great Seal or Wafer Great Seal to hold an inquest touching any real estate or any interest therein escheated or supposed to have escheated or been forfeited to the Crown either by the common law or by statute or both, and includes a person having power to hold such an inquest by virtue of his office.

“County” includes a county of a city, or a county of a town, and also a riding, parts, or division of a county, and the county of the city of London.

2. Where more Commissioners than one are named in a Commission, any one or more of them may, unless the Commission otherwise directs, exercise all the powers of the Commissioners.

3. The inquest shall be held openly and publicly, at such convenient place as the Commissioners appoint, in the county in which the lands in relation to which the inquest is held are situate; and may be adjourned from time to time and from place to place.

4. The number of the jury shall be twelve, but the Commissioners may proceed with a number not less than nine. The jurors shall be returned and impanelled by the sheriff of the county and sworn by the Commissioners to give a true verdict.

5. The attendance of witnesses may be enforced by Crown Office subpoena.

6. The Commissioners shall permit every person to give evidence, and shall permit any person claiming or setting up any title to the real estate therein, which is the subject-matter of the inquest, to be heard, and to cross-examine any witness by himself, or his attorney, or counsel.

7. The Commissioners may, if it appears to them expedient, discharge a jury, and thereupon a fresh jury shall be returned and impanelled.

8. On proof to the satisfaction of the Commissioners that a witness is dead or is unable to attend the inquest by reason of illness or absence from England and Wales, the Commissioners may, if they think fit, receive his evidence on affidavit made before one of the Commissioners, or by a declaration made under the Statutory Declarations Act, 1835 [5 & 6 Will. IV. c. 62], or by an affidavit made before any person for the time being authorised to administer an oath, for the purposes of any proceedings in the Supreme Court of Judicature.

9. The Commissioners may take the verdict or finding of a majority of the jury.

10. The inquisition shall be in writing or print, or both, and shall be under the hands and seals of the Commissioners present, and of the jurors concurring therein.

11. An inquisition touching real estate shall find of whom the real estate was held, and shall contain a finding with respect to every other material matter specified in the Commission.

12. The inquisition need not be indented. No counterpart thereof need be delivered to any of the jury.

13. The Commission together with the inquisition taken thereunder shall be forthwith returned into the Central Office of the Supreme Court of Judicature and shall be filed in the Crown Office Department.

14. A *melius inquirendum* under the same Commission, as to the whole or any part of the matters specified in the Commission, shall be awarded from time to time on the fiat of the Attorney-General; or the Lord High Chancellor may in any case award a *melius inquirendum*.

15. Upon an award of *melius inquirendum*, the inquest shall be held *de novo*, except so far as the award of *melius inquirendum* may direct that the first or any former inquisition shall stand good. The proceedings on the *melius inquirendum* shall be the same, *mutatis mutandis*, as on a first inquest.

16. Any person claiming or setting up any title to the real estate or interest therein, which is the subject-matter of the inquest, whether upon a first inquest or on an inquest held under a *melius inquirendum*, shall be entitled to traverse the same, or to object thereto in such manner as may be from time to time directed by the rules of the Supreme Court of Judicature.

17. No proceeding or inquisition under these rules shall be quashed or avoided by any omission or informality which is capable of being supplied or amended, and the High Court of Justice or a judge thereof, on motion or summons, may make any amendment or direct any proceedings which may be just. The Court or judge may at any time direct that the inquisition shall stand good, notwithstanding any defect specified in the direction, and any such direction shall be forthwith endorsed on the inquisition by the proper officer, and shall have effect as part of the inquisition.

18. The foregoing rules may be applied, *mutatis mutandis*, and so far as it is not otherwise provided by law, to inquests of office touching forfeiture of lands, or of any estate or interest in lands by reason of alienage or otherwise, and to inquests (by whomsoever held or taken) touching any title or claim of the Crown to or in respect of goods or chattels or to or in respect of lands or interest in lands otherwise than by way of escheat, but nothing in this rule shall invalidate any proceedings conducted otherwise than in accordance with these rules which would otherwise be valid.

19. These rules shall apply, *mutatis mutandis*, to inquests in relation to lands or interests in lands or goods and chattels claimed in right of the Duchy of Cornwall, and at any time when the possessions of the said Duchy are not in the possession of or enjoyed by Her Majesty, the Attorney-General of the Prince of Wales and Duke of Cornwall shall be substituted for the Attorney-General.

20. These rules shall not apply to inquiries into the title of Her Majesty in right of Her Duchy of Lancaster.

21. These rules shall be so construed that no right, title or prerogative of the Crown is thereby taken away or prejudiced.

22. These rules shall apply only to England and Wales.

23. These rules may be cited as the Escheat Procedure Rules, 1889.

(Signed) HALSBURY, C.

July 25th, 1889.

REGULATIONS AS TO PROCEEDINGS IN THE CHANCERY DIVISION
OF THE HIGH COURT OF JUSTICE IN THE NAME OF HER
MAJESTY'S ATTORNEY - GENERAL AT THE INSTANCE OF
RELATORS.

NOTE.—These regulations will apply equally to such proceedings in the King's Bench Division.

In the case of any application to Her Majesty's Attorney-General for his authority to commence in his name at the instance of a relator an action in the High Court of Justice, Chancery Division, the following regulations will be required to be observed, and, so far as they are prospective, the authority of the Attorney-General to use his name for the purpose of the proposed proceeding will be given on condition that the same shall be observed.

It is required that the statement of claim and all amendments thereof shall be signed by the Attorney-General.

The copy of the writ left with the Attorney-General for his signature shall be accompanied by the proposed statement of claim which the Attorney-General, if he shall allow the action, will also sign and return to the relator's solicitor to be delivered or filed as provided by the Judicature Acts, 1873 and 1875.

There shall also be left with the Attorney-General a second copy of the writ with a copy of the statement of claim appended thereto, on which there shall be written a certificate of counsel to the following effect: "I certify that this writ and statement of claim are proper for the allowance of Her Majesty's Attorney-General. Dated, &c." This copy will be retained by the Attorney-General.

The papers shall be accompanied by a certificate of the solicitor presenting the same for allowance that the proposed relator is a proper person to be relator, and that he is competent to answer the costs of the proposed action.

If any amendment of the statement of claim shall at any time become necessary, the proposed amended statement of claim and a copy thereof showing the proposed amendment shall be left with the Attorney-General. On such copy shall be written a certificate of counsel that the proposed amendment is proper for the allowance of the Attorney-General. If the Attorney-General shall approve the amendment, the amended statement of claim will be signed by him and returned to the relator's solicitor to be delivered or filed as may be required. The copy so certified will be retained by the Attorney-General.



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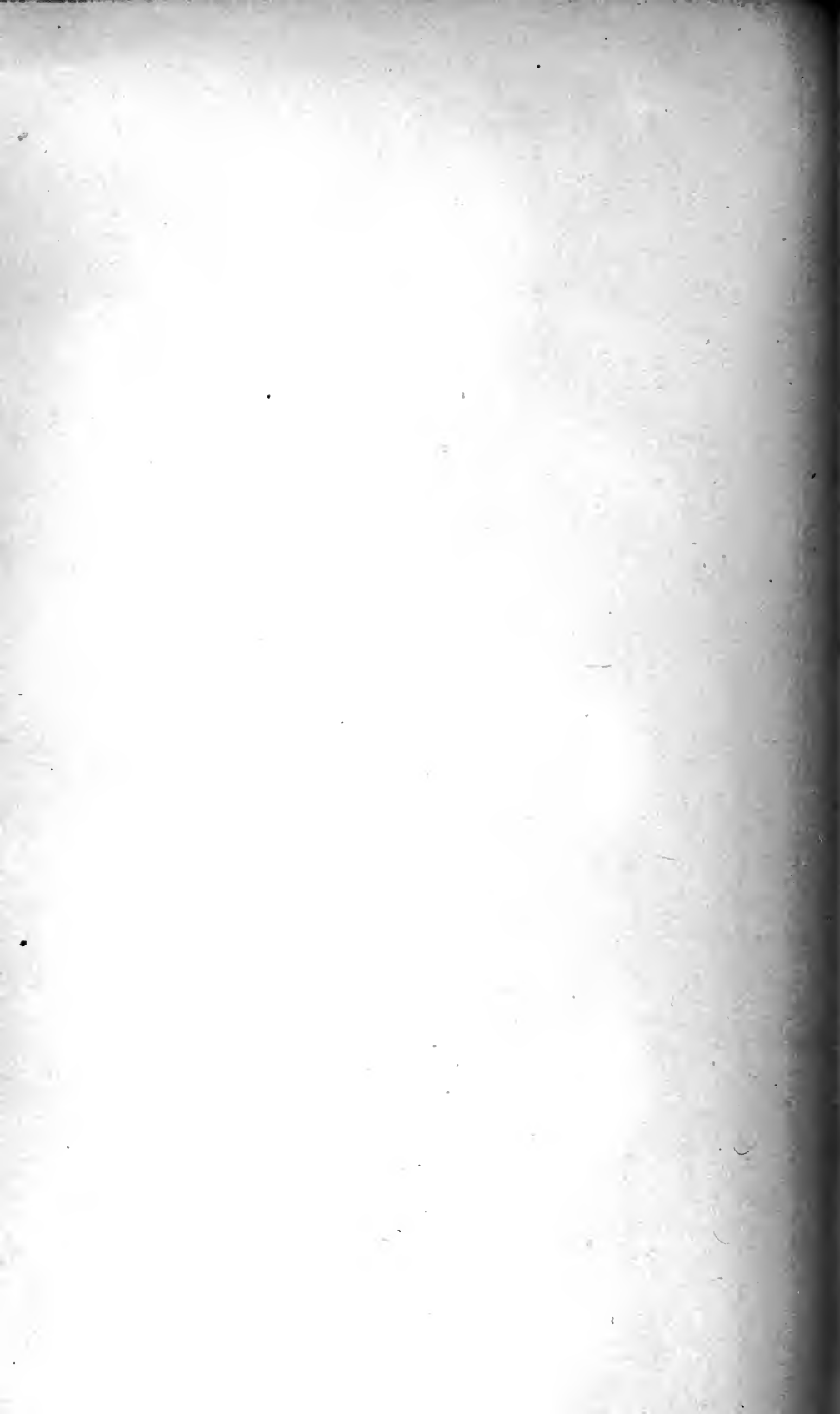
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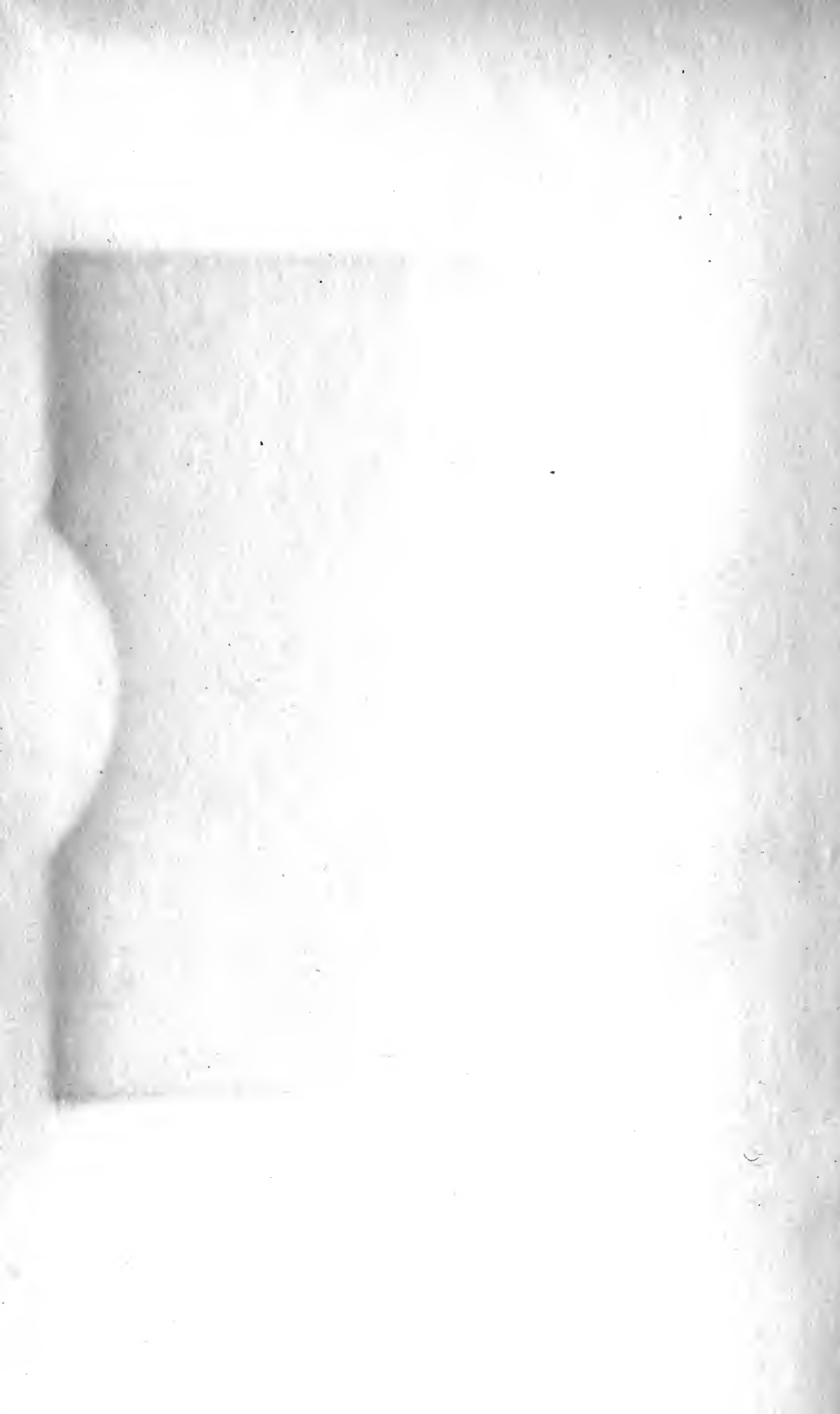
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